

No. 17057

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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

KIT MANUFACTURING COMPANY,  
Appellee.

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Transcript of Record

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FILED

DEC 19 1960

Petition for Enforcement of an Order of the  
National Labor Relations Board

FRANK H. SCHMID, CLERK



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United States  
Court of Appeals  
for the Ninth Circuit

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

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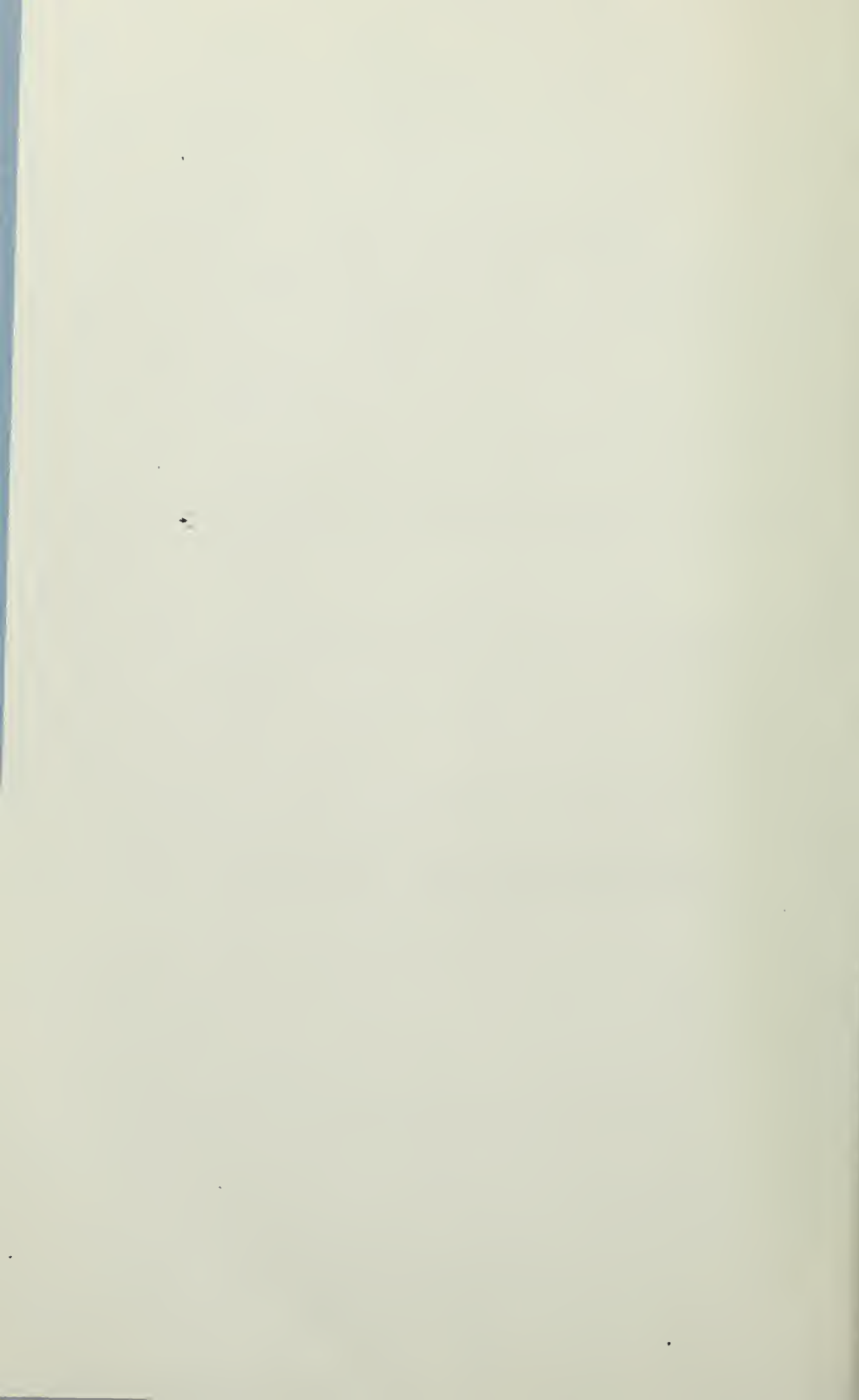
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Transcript of Record

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Petition for Enforcement of an Order of the  
National Labor Relations Board

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## GENERAL COUNSEL'S EXHIBIT 1-V

United States of America  
Before the National Labor Relations Board  
Nineteenth Region

Cases Nos. 19-CA-1742, 1766

KIT MANUFACTURING COMPANY

and

UNITED STEELWORKERS OF AMERICA, AFL-  
CIO

and

Case No. 19-CA-1815

BLUE MOUNTAIN DISTRICT COUNCIL, LUM-  
BER & SAWMILL WORKERS, AFL-CIO

SECOND AMENDED CONSOLIDATED COM-  
PLAINT WITH ORDER CONSOLIDATING  
CASES AND NOTICE OF HEARING

It having been charged in Cases Nos. 19-CA-1742 and 19-CA-1766 by United Steelworkers of America, AFL-CIO, herein called Steelworkers, and in Case No. 19-CA-1815 by Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, herein called Millworkers, that Kit Manufacturing Company, herein called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the Labor Management Relations Act, 1947, as amended (61 Stat. 136, 29 U. S. C. A. Sec. 141 et seq.), herein called the Act, the General Counsel of the National Relations Board, on behalf of the Board, by the undersigned Regional Director, acting pursuant to Section 10 (b) of the Act and Sections 102.15 and 102.33 of the Board's Rules and Regulations, Series 7, as amended, hereby orders that these cases be and they here-

by are consolidated, and hereby issues this Consolidated Complaint with Order Consolidating Cases and Notice of Hearing:

I.

The charge in Case No. 19-CA-1742 was filed on March 9, 1959, and a copy thereof was served on Respondent by registered mail on or about March 9, 1959. An amended charge in the same case was filed June 1, 1959, and a copy thereof was served on Respondent by registered mail on or about June 1, 1959. The charge in Case No. 19-CA-1766 was filed on April 14, 1959, and a copy thereof was served on Respondent by registered mail on or about April 14, 1959. The charge in Case No. 19-CA-1815 was filed on July 6, 1959, and a copy thereof was served on Respondent by registered mail on or about July 6, 1959.

II.

Respondent, a California corporation, is engaged in the manufacture and sale of trailers and mobile homes with plants at Long Beach, California and Caldwell, Idaho. Since December 1, 1958, when the Caldwell plant went into production, Respondent has produced at the Caldwell plant over \$100,000.00 worth of trailers and mobile homes, of which over \$65,000.00 worth were sold and delivered to purchasers located outside the State of Idaho.

III.

Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

IV.

Steelworkers and Millworkers are labor organizations within the meaning of Section 2(5) of the Act.

## V.

Commencing on or about January 1, 1959, Respondent, by its officers, agents and representatives, restrained, interfered with and coerced its employees at the plant at Caldwell, Idaho, in the exercise of their rights guaranteed under Section 7 of the Act, and is now so restraining, interfering with and coercing its employees. More particularly, Respondent, among other things, has engaged in the following acts and conduct:

(a) On or about January 22, 1959, warned two former employees that it would rehire them only on condition that they would not engage in any union activities in or near the plant at Caldwell.

(b) During January and February, 1959, conducted meetings of employees in which it told employees that if a union were voted in at the Caldwell plant, no one who signed a union authorization card would be promoted to a supervisory position.

(c) On or about March 17, 1959, told an employee that if he would keep out of union activities it would be to his benefit and that after Steelworkers lost a forthcoming Board election, he would receive higher wages.

(d) During February 1959, told another employee that he was not to have anything to do with unions and that he would be blackballed from Kit if he had anything to do with unions, and also requested this employee to talk against unions.

(e) Shortly before a Board election conducted on June 4, 1959, and on June 24, 1959, immediately preceding a run-off Board election on that day, held meetings of employees on company time and premises in which it told the employees, among other things, that if the plant went union all the employees would lose their jobs and Re-

spondent would start again with a new crew and that if they did not vote for the union the employees would receive paid holidays and paid vacations and insurance benefits.

#### VI.

Because of their membership in and activities on behalf of Steelworkers, Respondent on or about January 21, 1959, discharged Larry O'Brien, Jr., and George T. Norris, and, after a purported reinstatement, again discharged O'Brien and Norris on or about January 29 and February 25, 1959, respectively, and since that time has refused to reemploy O'Brien or Norris.

#### VII.

On or about February 25, 1959, Respondent discharged Archie Murray and since that time has refused to reemploy Murray because of his membership in and activities on behalf of Steelworkers.

#### VIII.

On or about February 27, 1959, Respondent discharged Lyall Howard and since that time has refused to reemploy Howard because of his membership in and activities on behalf of Steelworkers.

#### IX.

On or about April 3, 1959, Respondent discharged Elsworth Jordan and since that time has refused to reemploy Jordan because of his membership in and activities on behalf of Steelworkers, and also because Respondent learned that Jordan had given statements to a Board agent in connection with this and another Board case.

## X.

By its acts and conduct described above in paragraphs V through IX, inclusive, Respondent has interfered with, restrained and coerced its employees, and is interfering with, restraining and coercing them in the exercise of their rights guaranteed under Section 7 of the Act, in violation of Section 8 (a) (1) of the Act.

## XI.

By its discharge of O'Brien, Norris, Murray, Howard and Jordan, as described above in Paragraphs VI through IX, inclusive, Respondent has discriminated and is now discriminating against its employees, and in particular against the said O'Brien, Norris, Murray, Howard and Jordan, in such a manner as to discourage membership in Steelworkers and other labor organizations, in violation of Section 8 (a) (3) of the Act.

## XII.

By its discharge of Jordan because of giving statements to a Board Agent as described above in paragraph IX, Respondent discharged and discriminated against Jordan for giving testimony under the Act, in violation of Section 8 (a) (4) of the Act.

## XIII.

The activities of Respondent described above in paragraphs V through IX, inclusive, occurring in connection with the operations of Respondent as described above in paragraphs II and III, have a close, intimate and substantial relation to trade, traffic and commerce among the several states of the United States, and have led to and tend to lead to labor disputes burdening and obstructing commerce, and the free flow of commerce, within the meaning of Section 2(6) and (7) of the Act.

## XIV.

The aforesaid acts of Respondent as set forth and described above in paragraphs V through IX, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3) and (4), and Section 2(6) and (7) of the Act.

Please Take Notice that on the 15th day of September, 1959, at 10:00 a.m., MST, in the Probate Court Room in the Court House Annex, Caldwell, Idaho, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You Are Further Notified that, pursuant to Section 102.20 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of a verified answer to said complaint within ten (10) days from the service thereof, and that unless it does so all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Seattle, Washington, this 24th day of August, 1959.

[Seal]

/s/ THOMAS P. GRAHAM, JR.,  
Regional Director.

National Labor Relations Board,  
19th Region  
407 U. S. Court House,  
Seattle 4, Washington



## GENERAL COUNSEL'S EXHIBIT 1-Z

[Title of Board and Cause.]

## ANSWER

Comes Now the Respondent and for its Answer to the Second Amended Consolidated Complaint in the above cases denies each and every allegation contained therein not hereinafter admitted, qualified or explained. Respondent re-affirms its Answer filed in the Consolidated Complaint and in the Amended Consolidated Complaint in Cases No. 19-CA-1742 and 19-CA-1766 and asks that said Answers constitute an answer to the Second Amended Consolidated Complaint.

## I.

Respondent admits Paragraphs I, II, III and IV, but denies Paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, and XIV, and in connection therewith alleges that Respondent is unable, because of insufficiency, ambiguity and indefiniteness of the allegations contained therein to answer Sub-paragraphs (a), (b), (c) and (d) of Paragraph V as no time or place or names of employees are mentioned and therefore denies all of said allegations and asks that said paragraphs be stricken from the Complaint as indefinite and improper. Respondent specifically denies Sub-paragraph (e) of Paragraph V.

## II.

Respondent denies Paragraphs VI, VII, VIII and IX upon the grounds and for the reasons that said employees were either laid off for cause or quit of their own free will and accord or were unable to perform the services assigned to them, and denies that any of the

severances were discriminatory or in violation of Section 8 or any other section of the Act.

### III.

Respondent specifically denies Paragraphs X, XI, XII, XIII and XIV and in connection therewith re-affirms that said layoffs or severances of employment were for reasons other than interferences with the employees' protected activities and were not violations of Section 7 or 8 or any other sections of the law.

Wherefore Respondent asks that the Second Amended Consolidated Complaint in the above entitled case be dismissed on the grounds that the allegations contained therein are not true and on the further grounds that the allegations are vague, indefinite, uncertain, ambiguous and allege incidents too remote, too indefinite and too uncertain for the Respondent to answer or prepare a defense for the same.

KIT MANUFACTURING COMPANY,

/s/ By ELI A. WESTON,  
Attorney,  
711½ Bannock St.,  
Boise, Idaho.

Duty Verified.

Affidavit of Service By Mail Attached.

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[Title of Board and Cause.]

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This proceeding against Respondent, Kit Manufacturing Company, was heard at Caldwell, Idaho, on September 15 and 16, 1959. The issues litigated were whether commencing January 1, 1959, Respondent engaged in various acts of interference, restraint, and coercion, and discharged two employees on or about January 29 and April 2, 1959, respectively, thereby engaging in unfair labor practices within the meaning of Section 8(a)(1)(3) and (4) of the Act.<sup>1</sup> Oral argument was waived at the close of the hearing and briefs have been submitted by the General Counsel and Respondent.

On the entire record in the case, and from my observation of the witnesses, I make the following:

Findings of fact

I. The business of Respondent

Kit Manufacturing Company is a California corporation engaged in the manufacture and sale of trailers and mobile homes at plants in Long Beach, California, and Caldwell, Idaho. The Caldwell, Idaho, plant with which this proceeding is concerned entered into production on or about December 1, 1958. From that date to the date of the amended complaint, August 24, 1959, it has produced trailers and mobile homes valued in

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<sup>1</sup>A motion by the General Counsel to dismiss non-litigated allegations of discrimination as to three other employees was granted during the hearing.

excess of \$100,000. Of these, sales and shipments valued in excess of \$65,000 have been made to points outside the State of Idaho. I find that the operations of Respondent affect commerce.

## II. The labor organizations involved

United Steelworkers of America, AFL-CIO, and Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, are labor organizations admitting to membership the employees of Respondent.

## III. The unfair labor practices

### A. Introduction; the issues

Respondent's Caldwell plant was established in November 1958 and shipments of products commenced in December. This enterprise quickly drew the attention of various labor organizations and, on January 19, 1959, United Steelworkers of America, AFL-CIO, herein called the Union, filed a representation petition in Case 19-RC-2290 covering the approximately 104 employees. Two other labor organizations, including Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, herein called Lumber and Sawmill Workers, intervened and a hearing was held on February 17, 1959.

The election was held up because of the charges in the instant proceeding,<sup>2</sup> but it was ultimately held on June 4, 1959, with three labor organizations participating. The two highest votes were for nonunion and for Lumber and Sawmill Workers. A run-off election was conducted on June 24, and a majority of the votes were cast in favor of no-union. Objections to the

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<sup>2</sup>The original charge in Case 19-CA-1742 was filed by the Union on March 9, 1959.

election were thereafter filed, and it appears that, subsequent to the close of the instant hearing, the Board has, on October 13, 1959, set aside the run-off election and directed that another election be held.

The alleged acts of interference, restraint, and coercion consist of statements that employees would be hired only on condition that they refrain from union activities, statements that employees who signed union authorization cards would not be promoted to supervisory positions if a union were voted in, promises of benefits if the Union lost a representation election, threats of reprisals for engaging in union activities and voting in a union, a request that an employee talk against unions, and promises of benefits in return for a no-union vote, all between January and June of 1959.

It is further alleged that Larry O'Brien, Jr., was discharged on or about January 21, 1959 and again discharged on or about January 29, after a purported reinstatement, because of his membership and activity in behalf of the Union and that Elsworth Jordon was discharged on or about April 3, 1959, for the same reason and further because he had given statements to a Board agent in connection with this and another case. The case is marked by a number of conflicts in testimony.

#### B. Interference, restraint and coercion

The alleged discriminatory discharge of Larry O'Brien, Jr., is discussed hereinafter. The General Counsel contends at this point that O'Brien, at the time of his rehiring on January 22, 1959, was unlawfully warned that he was being rehired only on condition that he refrain from engaging in any union activities in or near the plant. According to O'Brien, he encountered Gen-

eral Manager Ray Skinner that evening in a bar and Skinner offered him and another ex-employee jobs "if he would not engage in union activities in or around the plant," pointing out that O'Brien and another employee had previously violated Company Rule 20. This rule forbids "Distributing written or printed matter of any description on Company premises unless approved by Management."

The testimony of O'Brien discloses, however, that O'Brien and his colleague viewed this statement by Skinner as being directed to activities during working time. O'Brien, who admittedly had considered it permissible to distribute union literature during working time, testified that "We said that we wouldn't do that around the plant or on Company time." He further testified that Skinner conditioned reinstatement on their not engaging in union activities "in or around the plant"; the men promptly responded that there was no restriction upon engaging in union activities "on their own time" and Skinner did not dispute this.

The testimony of Skinner is that reports had come to him from foremen that O'Brien had distributed "material in the plant when he should have been working" and that "he was passing out union cards, I believe, to put it exact in the plant and on Company time." Skinner elsewhere testified that, according to the reports, the employees would read the cards and that this was a time-consuming matter.

The General Counsel makes no attack upon Rule 20 as such and I am convinced, from the foregoing testimony, that the thrust of Skinner's statements was directed to O'Brien carrying on union activities during working time only. O'Brien's testimony reveals that

his union activities, primarily card distribution, were slight and that he did this chiefly during nonworking time. Accordingly, I find that Respondent in this respect did not engage in conduct violative of the Act. *N. L. R. B. v. Peyton Packing Co.*, 142 F 2d 1009 (C. A. 5) cert. denied 323 U. S. 730, *F. C. Huyck & Sons*, 125 NLRB No. 34, and *Walton Manufacturing Co.*, 124 NLRB No. 181.

The next incident involved employee Elsworth Jordon whose discharge is discussed hereinafter. On or about February 1, 1959, Jordon, who had just resigned his position with another employer, attended a meeting of the Union held in a private room attached to a local bar known as the Stringbusters Lounge. As he left the room and entered the public portion of the premises, he encountered Skinner at a table and joined the group. According to Jordon, Skinner discussed the possibility of employing him, said that he could do things for employees that a union could not do, and stated that if he hired Jordon he did not want him to have anything to do with unions. Jordon replied that this restriction was agreeable with him, but disclosed that he had "signed a deal," presumably a union card, at his previous employer's premises.

Skinner testified that he recalled no discussion of unions on this occasion, but admitted that he might have said he could not afford to pay a union scale. Employee Billy Williams, a union member, who was placed in the group by Jordon, supported Skinner's version of the incident. He testified that Skinner said he could top any offer from Jordon's prior employer, that he could do more for Jordon than a union could do, and that he, Williams, recalled no discussion of Jordon's union activities. I credit Skinner's version of this incident, as

supported by that of Williams, a witness for the General Counsel, and it appears that Jordon may have had in mind a conversation the next morning as set forth below.

The following morning Jordon reported to work and I find, as he uncontrovertedly testified, that he was informed by Skinner that he would be "blackballed" if he had anything to do with the Union, that he, Skinner, did not want him to attend any union meetings, and that although he was not so ordering Jordon, he did not wish him to attend any union meetings; Skinner did not recall any conversation on this occasion.

Sometime in March of 1959, according to the credited testimony of employees Billy Williams and Donald Jessen, Skinner summoned the entire finishing crew to his office. He stated that he could do more for the employees than any union, but if the Union came in, as Williams testified, he could not afford to pay women the union scale to perform men's work. He stated that if the Union came in, the plant would be closed and "nobody would have a job." Jessen attributed similar statements to Skinner to the effect that if the Union came in Respondent would be unable to keep the plant open "and he would have to close it down and everyone would lose their jobs."

A number of women on the finishing crew were present on this occasion and Skinner pointed out that in the advent of union organization with attendant union wage scales he would be compelled to replace the women with male employees who could undertake heavier duties. Skinner also pegged this discussion on a broader basis, stating that he could not pay union wages and that the plant would have to be shut down.



Skinner admitted holding meetings of employees in February and March during which he expressed his views on union organization. He did not deny the foregoing statements attributed to him by Williams and Jessen, although he admittedly stated in meetings held during June, discussed below, that in the advent of a union contract with higher wage scales for women, the latter might be replaced by men who could perform heavier tasks.

On the night of March 17, 1959, Jessen attended a union meeting at the Stringbusters Lounge. On leaving the meeting, he passed through the bar and encountered Skinner. The latter asked him why he wanted a Union, and, after Jessen replied that unionization would result in better working conditions, Skinner stated, as Jessen testified and I so find, "If you'll string along with me, I can do more for you than any union. I know you're happy making a \$1.45 an hour [apparently Jessen's rate of pay] . . . but if you string along out here with me and help us, we'll help you . . . You won't be making that \$1.45, you'll be beating that."<sup>3</sup>

As set forth, an election in the representation proceeding was scheduled for June 4, and the General Counsel relies herein on several talks to employees by Skinner at this time. Colle McKenzie, still in the employ of Respondent, testified and I find, that approximately one week before the June 4 election, he was one of a group of approximately 12 employees summoned to Skinner's office. Skinner stated that the newly formed plant did not need a union as it was premature; that Respond-

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<sup>3</sup>Skinner did not recall the occasion but did not deny that such a conversation took place. Jessen further testified that Skinner made a reference to having a list of names of those employees who had signed cards. However, the complaint does not advert to the latter statement, and no finding is made thereon.

ent would rather wait before union activities commenced; that the employees should not attend union meetings; and that it would be desirable to wait for one year to ascertain how the plant progressed.

Skinner again raised the subject of female employees. He stated to his all male audience that rather than pay male wages to women he would discharge the female employees and replace them with men.<sup>4</sup> Skinner stated that "before he would pay Union wages, what the Kit plant has on the coast . . . that he would know who voted and he would let us go."

Finally, Skinner for the first time raised the topic of a group insurance plan for employees, stating that Respondent had been trying to install one at the plant, but "that it would probably be a year but he would work on it and see if he couldn't get it sooner." This was the first reference to the insurance plan, according to McKenzie, who had entered the employ of Respondent in February, and there is no evidence to the contrary.<sup>5</sup>

A second meeting was held on June 3, under similar circumstances, and was attended by nine or ten employees including Donald McKinney. While McKenzie testified that he attended a second meeting on or about this date which followed the pattern of the previous one,

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<sup>4</sup>The record does not disclose which positions in the plant were filled by women.

<sup>5</sup>Skinner admitted that he explained his views on unions at this and other meetings discussed below during this period and that he mentioned the possibility of the plant closing down if the Union came in, as well as the replacement of women by men. He denied stating that an insurance plan could not be installed for about a year, but did admit saying, "it could be possible that this plant would have to operate for one year before we could get an underwriting company to take insurance on it." As appears below, there was a dramatic change of circumstances on June 24, the day of the run-off election.

it is not clear whether he was referring to the same meeting described by McKinney, as set forth below.

According to McKinney, and I so find, after discussing union promises of improved working conditions and stating that Respondent would not be dictated to, Skinner announced that the plant was at the break-even point. Although praising his crew, he stated that Respondent "would not tolerate a Union, would dismiss the entire crew if they went Union and start with a new crew." He also stated that, "If you vote Union, you can be dismissed from the company for voting Union." He brought up the insurance plan again, acknowledging that there had been discussion on the topic, but stated that Respondent "couldn't afford to pay for the plan in less than a year."

On the morning of the run-off election, June 24, as McKenzie testified, and I so find, approximately 15 employees were summoned to a meeting in Skinner's office. Skinner immediately brought up the insurance plan, explaining that Respondent was now in a position to install a group insurance plan. He extolled the advantages of such a plan and distributed cards on which the men were directed to list their names, address and dependents. He turned the subject to the election and stated that they "should vote for the plant and not for the Unions."

Skinner stated that it was urgent to have the cards signed and returned to the West Coast within a day or two in order to meet a deadline for putting the plan into effect. In his testimony, Skinner admitted that the insurance plan was announced on this occasion immediately prior to the election. He claimed that Respondent had been working on the plan since the start of the plant at Caldwell the previous November; that he had been ad-

vised on June 23 by the company secretary at the California plant that it was necessary to have the cards returned to California by the following Monday, presumably June 29; and that this was the reason for his haste. I find, however, that as recently as June 3, three weeks earlier, Respondent had put its employees on notice that the insurance plan would not be installed for approximately one year.

### Conclusions

I find that Respondent has unlawfully interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 within the meaning of Section 8(a)(1) of the Act by the following conduct:

(1) The statement by Skinner to Employee Jordon, on reporting for work on or about February 2, that he would be "blackballed" if he had anything to do with the Union and that he did not want him to attend union meetings, clearly a threat of economic reprisal for so doing.

(2) The statement by Skinner to the finishing crew in March that he could not afford to pay women the union scale and that if the Union came into the plant, the plant would be closed and everyone would be out of a job. He also stated that he could not pay union wages and that unionization would result in a plant shutdown. These statements were open threats of reprisals to female employees as well as the entire complement for engaging in union activities.

(3) On March 17, Skinner told employee Jessen that he could do more for him than any union and that if he strung along with him, Jessen would be receiving more than his existing rate of pay. This was manifestly a

promise of a benefit for rejecting the Union or for not supporting it.

(4) At a meeting approximately 1 week prior to June 4, 1959, Skinner announced that female employees could be discharged and replaced by men if all wages were raised to the scale for men; the context was one wherein the employees were being urged to reject unionization. As such therefore, it was a threat of reprisal for engaging in union activities.

(5) In the same talk, Skinner stated that he would ascertain who had voted for the Union and would discharge them before he paid union wages, clearly a threat of economic reprisal.

(6) At the June 3, 1959 meeting, Skinner announced that he would not tolerate a union and that he would discharge the crew and replace them with new employees if they voted in favor of a union; the threat of economic reprisal is manifest.

(7) On June 24, immediately prior to the run-off election, Skinner urged the employees to vote against unionization in the election and at the same time announced that a group insurance plan was being installed. While Respondent may have been working on an insurance plan since November 1958, as Skinner claimed, by contrast, only several weeks before, Skinner had more than once pointed out to employees that the introduction of such a plan was at least 1 year distant. It is clear that the plan was pushed through rapidly and the only evidence by Respondent of its introduction is the testimony of Skinner who allegedly knew only what he had been told by the management of the California plant.

A preponderance of the evidence warrants the con-

clusion that Respondent precipitately announced the introduction of the insurance plan on the day of and preceding the June 24, election for the purpose of influencing the votes of employees in the election; indeed, as noted, part of his talk was devoted to precisely that point, viz., a plea for a no-union vote. While time may conceivably have been of the essence, assuming Respondent's bona fides in installing the plan, at the very least it would seem and I believe that announcement of the plan could have been delayed until the close of the polls on election day with no resultant hampering of Respondent's timetable of operations. I am convinced and find that announcement of the plan was timed so as to offer employees an economic benefit in return for rejecting a labor organization in the election later that day.

C. The discharge of Larry O'Brien, Jr.

O'Brien entered the employ of Respondent in November 1958 and was assigned to the tool room. He testified that soon thereafter he became active in the Union and distributed union cards in the plant, primarily on his own time. Plant Manager Skinner admittedly knew that O'Brien and another employee were distributing cards for the Union in the plant. There is no evidence of any other union activities on his part prior to his discharge.

On January 14, 1959, O'Brien was assigned to the operation of a fork lift truck. Skinner uncontrovertedly testified that he contacted O'Brien during the day and cautioned him against operating the vehicle like a "hot-rod." Within five minutes, O'Brien collided with a door causing \$200 or \$300 of damage thereto; he was discharged by Foreman Lang that evening at Skinner's request.

O'Brien conceded that the collision took place but claimed that Foreman Lang had instructed him earlier that day to speed up his operation of the fork lift truck and then, after the collision, criticized him for negligent operation of the vehicle. He claimed that Lang, who did not testify herein, told him upon his discharge that his work had been failing for several days and that "it wasn't entirely the door" incident that caused his discharge. O'Brien allegedly asked Lang "if it had anything to do with the Union, and I think he said something like no or partly or something. I don't remember now . . . ." O'Brien had previously operated the fork lift truck for two or three hours during a two or three-day period.

I see little support for the position of the General Counsel in the foregoing. Indeed, the General Counsel concedes that there is some substance to Respondent's contention that O'Brien was discharged for cause, but stresses other factors. And while Skinner did assign other reasons, including the distribution of union literature during working time, as heretofore set forth, Skinner did claim that the main reason was the fork lift truck incident. The preponderance of the evidence is, and I so find, that O'Brien was discharged on January 14, because of the fork lift incident and, but for the incident, would not have been discharged on that occasion. Accordingly, the record will not support a finding that he was discharged on January 14, because of his union activities.

O'Brien was reinstated on January 26 and again terminated on January 29, under circumstances described below, which the General Counsel contends warrant a finding of discrimination on the later date. Soon after O'Brien's first discharge, the Union concluded that he

and another employee, Norris, whose case was not litigated and was dismissed herein, as set forth above, had been discharged because of their union activities. On the morning of January 22, according to the testimony of International Representative Austin Smith of the Union, circulars which were intended for distribution among the employees of Respondent were prepared. Therein, the employees were urged to organize for better conditions and to protect themselves against discrimination such as that allegedly practiced against O'Brien and Norris. The circular also stated that unfair-labor practices charges were being filed in the cases of O'Brien and Norris.<sup>6</sup> The employees were invited in the banquet room of a hotel in Caldwell.

There is a conflict, one of a number, in the case, between Skinner and Smith as to whether they lunched that day or the next at which time they discussed the cases of O'Brien and Norris. Smith a meticulous witness, testified that he lunched with Skinner on Thursday and requested that the two men be reinstated. Smith deemed Skinner's response to be equivocal, promptly telephoned his office and ordered that the circulars be distributed at the plant that day. They were distributed that afternoon to the employees as they left at the close of the shift.

According to Skinner, the luncheon took place on the following day, Friday, and, in response to Smith's request to reinstate the two men, he stated that O'Brien already had been reinstated. Although I am disposed to and do credit Smith's version that the talk took place

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<sup>6</sup>The original charge filed on March 9, 1959 did not list O'Brien. His name was added in an amended charge filed in June subsequent to various other charges.  
to attend a meeting that evening, Thursday, January 22,



on Thursday, I deem the date to be of no particular significance herein.<sup>7</sup> Presumably it is the General Counsel's purpose to show that reinstatement resulted from the Union's request, thereby establishing O'Brien's connection with union activity. It is equally logical, however, to deduce therefrom that this also reflected Skinner's lack of animosity toward the Union.

As found, O'Brien attended the union meeting on the night of Thursday, January 22, at the scheduled location and encountered Skinner in the adjacent bar. In a resulting conversation, according to O'Brien, Skinner offered him his former job. O'Brien declined, stating that he was not experienced in the operation of a fork lift truck and that he would return if he were placed as a welder, work with which he was familiar. Skinner replied that O'Brien's application had not disclosed this experience and immediately offered him a job as a welder. While the General Counsel stresses the fact that the application did show that O'Brien had been a welder in a prior job, this information is on the back of the application and O'Brien listed himself on the face thereof as a repairman. Furthermore, there is no evidence that Skinner ever read this application and it would seem that Skinner's statement, if made, was a gratuitous one.

As found, Skinner did instruct O'Brien and Norris on the evening of January 22 to refrain from engaging in union activities in the plant, and the record warrants the finding that the statement was directed to O'Brien's

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<sup>7</sup>Skinner admittedly told the two men on the night of the union meeting that he was reinstating them, but not because of the Union's "insistence." The union meeting took place on Thursday evening and this supports Smith's testimony that the Union's request for their reinstatement preceded the offer of reinstatement.

working time only and was so construed by him. Be that as it may, there is no evidence that O'Brien thereafter engaged in any further union activities in the plant where he worked but another four hours on January 26, as described below.

Skinner was schedule to depart that weekend for a business trip to California and advised Plant Foreman Brown that O'Brien would return to work as a welder. O'Brien did report for work on Monday morning, January 26, and was assigned to Foreman Pearl Lewis of the welding shop. O'Brien testified that Lewis gave him a copy of the plant rules with Rule 20 circled; apparently no comment was made by either man. O'Brien testified that he was ill when he reported for work that morning and at noon, four hours later, was too ill to continue. He asked Foreman Lewis if he could see the company physician and was referred to Plant Foreman Brown. The latter approved and O'Brien visited a company physician who gave him "nerve capsules" to quiet him down and commented that he might have the flu. Because of lack of funds, he did not adopt the physician's suggestion that he proceed to a Veterans Hospital at Boise.

To the contrary, O'Brien proceeded to his residence and went to bed where he remained for four days. He claimed that he called the plant on Tuesday morning and again on Wednesday and notified "them" that he would not be in; the record does not disclose whom he contacted on these occasions. He further testified that he called in on Thursday and was put through to Skinner who had just returned from California. The latter promptly told O'Brien that he was sorry; that Respondent could not "use you any more"; and that Foreman

Lewis as well as the other foremen did not want him. O'Brien further testified that "I believe it was on Thursday" that he spoke with Skinner.

This poses several conflicts which do not permit of precise resolution. As noted, Foreman Lewis was not available to testify. Plant Foreman Brown flatly contradicted the testimony of O'Brien that he gave notice of his departure on Monday, January 22, claiming that O'Brien said nothing to him about his illness and departure. He further claimed that Foreman Lewis had reported to him that evening that O'Brien gave him, Lewis, no notice of his departure.<sup>8</sup>

Brown was then confronted with Respondent's Exhibit 3, an official record of Respondent, consisting of a Change of Statuts report on O'Brien admittedly filled out by Foreman Lewis and dated January 29, wherein the latter wrote "upon being reinstated this man assigned to my department as a Welder. At 12:50 p.m., he stated he was unable to continue because he didn't feel well and left—." [Emphasis added]

Obviously, as the General Counsel points out, if this report is credited, it places Foreman Lewis in the position of contradicting Brown's testimony on a basic aspect of the case. The report continues on, however, to state "since he has not been in touch I consider it to be a voluntary termination." Thus, if the report is credited and a finding is made that O'Brien did give notice to Lewis on Monday, a cogent argument is presented, contrary to the position of the General Counsel, for a further finding that O'Brien did not contact Respondent again, or at least that no contact was made

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<sup>8</sup>His testimony was received only as evidence of what Lewis reported to Brown and not as evidence of what O'Brien stated to Lewis.

with his immediate foreman. This further supports the testimony of Skinner that he did not return until Saturday and therefore held no conversation with O'Brien on the previous Thursday.

Still another disparity presents itself, shifting the tide momentarily in favor of the General Counsel, in that Skinner signed a statement for an investigator of the General Counsel wherein he deposed that here turned from California on a Thursday; despite this, he thereafter maintained in his testimony that he had not written the statement, a reference to the transcription by the investigator, and that he did not return until the following Saturday. And this, of course, is not inconsistent with Respondent's Change of Status report which in effect is a statement that O'Brien never contacted Respondent after Monday.

### Conclusions

As noted, the case of O'Brien is marked by many conflicts of testimony but the following factors are readily apparent.

(1) O'Brien's union activities were not outstanding prior to his original termination on January 14, 1959.

(2) No particular sustenance can be given to the position of the General Counsel from the fact that the Union interceded for him after his first discharge and that he was thereafter reinstated. The testimony involving the intercession by the Union is equally capable of supporting an inference that Respondent was not motivated by anti-union considerations.

(3) O'Brien did not thereafter engage in any union activities, at least not prior to his subsequent termination on January 29.

(4) While Foreman Lewis' statement refutes the testimony of Brown as to O'Brien's giving notice of his departure on January 26, and here as well as below in discussing the discharges of Jordon, I do not credit Brown's testimony, nevertheless, Lewis' affidavit proceeds to support testimony that neither Skinner nor other management representatives thereafter heard from O'Brien.

(5) In sum then, this record will not support a finding that the original discharge on January 14 was discriminatory and, although not entirely free from doubt, a preponderance of the evidence impels the same finding as to the January 29 termination. It is accordingly recommended that the case of O'Brien be dismissed.

#### D. The discharge of Elsworth Jordan<sup>9</sup>

Jordon was hired by Respondent as a maintenance man on or about February 1, 1959, following a chance meeting at the Stringbusters Lounge immediately following his attendance at a meeting of the Union. Jordon had recently left the employ of another concern in an allied field of manufacture which the Union apparently was attempting to organize and he was a member of the Union at the time. As set forth above, the meetings of the Union were held in a room adjacent to the Stringbusters Lounge or in a similar facility at a local hotel.

The rate of pay was agreed upon, Jordon was promised a raise of 30 cents per hour in three weeks and he was directed to report to work on the following morning. On so doing, as heretofore found, Skinner told Jordon that he did not want him to attend any union

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<sup>9</sup>In the complaint his name appears as Ellsworth Jordon.

meetings, that he would be "blackballed" if he did so and that it would help if Jordon spoke against unionization. Jordon promised to have nothing to do with meetings of the Union while he worked for Respondent. Jordon adhered to his pledge until approximately mid-March; a change of heart resulted from the fact that he requested the promised pay raise from Skinner and the latter either rejected the request or put him off.

Prior thereto, on or about March 1, 1959, Skinner, as Jordon testified, accused him of attending union meetings contrary to his promise. Jordon, who in fact had not attended any union meetings since his pledge, denied the accusation. He changed his mind on March 17 when he resumed attendance of union meetings and he attended meetings on March 24 and March 31.

Skinner was present in the adjacent bar on the night of the March 17 meeting and, according to Jordon, conversed with him after the meeting. The record amply demonstrates that Skinner was fully familiar with the fact that a union meeting was being carried on at the time although his presence in the bar may well have been primarily social in nature.

Also relied upon herein by the General Counsel is the fact that Jordon signed a statement for a Board investigator on or about March 11, relating to the activity of the Union at his prior place of employment. On March 12, he informed Skinner of this act, although he did not recall whether Skinner questioned him about it or whether he volunteered the information.

Jordon did not recall seeing Skinner in the area at the March 24 meeting, but did observe him on March 31, although no conversation apparently took place. The last day that Jordon actually worked for Respondent

was Tuesday, March 31, according to Respondent's records, and he was thereafter terminated under the following circumstances.

On the morning of April, as Jordon uncontrovertedly testified, and I so find, Jordon telephoned the plant and spoke with his immediate superior, Foreman Lang, who customarily directed his work. He complained of a foot infection, obtained permission from Lang to be absent and the latter stated that he would notify Skinner of Jordon's absence. Skinner conceded that Jordon's superior, presumably Lang, had so notified him on April 1. Jordon's testimony was that on coming to work for Respondent, Skinner had instructed him to "call in" in case of absences and did not specify whom to call. I find that Jordon complied with the appropriate instruction both on this occasion as well as on the following day, described below. While Respondent attempted to claim that Jordon had in effect terminated himself, the record, as will appear below, warrants a finding that Jordon was discharged by Respondent on April 2; indeed Skinner so conceded in an affidavit submitted to a Board investigator.

On the morning of April 2, Jordon's feet were still troubling him. He telephoned the plant, as he testified; was connected with the office girl; and notified her that he would be absent that day as well. She agreed to notify his superior. Unlike the previous day which Jordon had devoted to soaking his feet in a manner previously prescribed by his physician, Jordon did visit a local physician that morning.<sup>10</sup>

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<sup>10</sup>Skinner testified that Jordon called in only on April 1; he later admitted that Jordon might have called up on April 2, but did not speak with Skinner.

At approximately 1:30 p.m., while treating his feet at home, Jordon read the local paper and noticed an advertisement by a local employment agency for a maintenance man; he immediately realized in view of the smallness of the community, that this was manifestly his job. This advertisement was in an afternoon paper which hits the streets at approximately 2 p.m. The advertisement also appeared in the April 1 issue of the paper, as well as the April 2 issue, and Jordon believed that on this occasion he noticed it in the April 1 issue. It is actually immaterial herein which days' issue Jordon was reading because he promptly repaired to the plant and arrived at 2:30 p.m.

He saw Skinner, showed him the advertisement and asked if this meant that he was discharged. Skinner replied in the affirmative, according to Jordon, and stated that he had been taking off too much time and that he had been staying overtime to do his work; Skinner promptly gave him his paychecks.

Skinner claimed that he told Jordon he had not written a termination notice for him, but that he was looking for another maintenance man. Jordon persisted and asked if this meant that he was discharged. Skinner finally admitted that if Jordon stated it in that form, "that's the way it is." Skinner claimed that he had not decided to terminate Jordon as of that moment and contended that he had him in mind for another job at the plant. The fact is, however, that Skinner never mentioned this other position to Jordon at any time and I find, therefore, that Skinner discharged Jordon on this occasion.

#### Contentions and Conclusions

Initially, I believe that it is unnecessary to treat with



the multiplicity of contentions raised by Respondent herein in all their ramifications, because a partial consideration of them will readily demonstrate their lack of substance and intrinsic contradictions and serves rather to lend substantial support to the contentions of the General Counsel herein.

(1) Respondent developed evidence to the effect that Jordon was reprimanded, in a notice prepared by Skinner on March 30, 1959, for smoking and loitering in the restroom; it is not clear whether the incident took place on March 30 or prior thereto. The simple answer to this is that Skinner admitted it played no part in the decision to terminate Jordon.

(2) Skinner claimed that Jordon was lacking in all qualifications as a maintenance man. However, according to Jordon and I so find, Foreman Lang told him three weeks after he was hired that he was progressing satisfactorily and, in addition, Skinner told him to keep up his good work. Jordon was never warned about the possibility of discharge and even Skinner testified only that he once told Jordon that he had to learn his job "better."

(3) Respondent adduced testimony to the effect that Jordon was absent a great deal whereas Jordon testified that he was absent only 2 half days during March with both absences authorized by Respondent. While Respondent's own exhibit, Jordon's Change of Status report prepared on April 13 subsequent to the date of his termination, states that Jordon's attendance was irregular, this very exhibit lists the hours that Jordon worked during March as 41, 36.5, 37.3 and 42 hours per week. This in my belief, and I so find, supports the testimony of Jordon. A further reference in the

exhibit to 16 hours presumably refers to the partial work week which ended the month and included the last 2 days that Jordon worked. Moreover, Jordon uncontrovertedly testified that he was never criticized for these 2 absences.

(4) While it would seem that Respondent was not dissatisfied with Jordon prior to the end of March, Respondent adduced considerable testimony concerning and incident on March 21, which allegedly demonstrates that Jordon was insubordinate and refused to cooperate because he did not finish a work assignment on that date. It is Respondent's claim, as testified by Skinner and Foreman Brown, that Jordon was called in on a Saturday morning to perform an urgent assignment, viz., relocating of certain pipes which were used as airlines; that Jordon actually worked about 2 or 3 hours; and that he then left with the project incomplete. It is claimed that Brown was required to finish the project himself that afternoon so that the new installation would be ready for use on Monday morning.

The testimony of Jordon is diametrically opposed to that of Respondent's two witnesses, as is that of his former co-worker James Taber. Both were in substantial agreement that they worked on this airline installation that morning; that after it was finished at approximately 10:30 or 11:00 a.m., Jordon told Brown that the project was finished and further that he was not feeling well; and that Brown, noting that the job was finished, authorized Jordon to leave for the day. Skinner's testimony with respect to this incident varied considerably. He originally testified that he did not know whether Jordon received permission to leave, but later claimed that permission was not obtained from

Brown or himself. There are, however, several further factors which demonstrate that the testimony of Taber and Jordon herein is the more reliable.

(a) It is conceded that although Jordon worked the rest of the month of March, consisting of the week of March 23 and 2 days on March 30 and 31, Respondent never mentioned this alleged dereliction to him. Although Jordon's termination notice which is in large measure couched in generalities such as refusing to cooperate in the work and not being qualified to do the job, became specific and cited work week hours in support of the claim, treated above and rejected, that Jordon was excessively absent during March, it was silent as to this episode.

(b) Jordon resided about 5 blocks from the plant, had a telephone and yet was not contacted on this day after his purported premature departure. If his presence was so urgently required, surely a contact could readily have been made and yet there is no evidence that any was attempted.

(c) The record uncontrovertedly discloses that Taber was instructed that Saturday afternoon to build tables after, as Taber claimed, the airlines project was complete. Taber claimed herein that he worked until noon on the tables and then left the plant upon completing this assignment. This not only tends to demonstrate that no afternoon work was performed, but significantly is readily refutable by Taber's time record if his testimony were contrary to the fact; no such record was proffered herein. Moreover, if the airlines project was urgent but incomplete, why then was Taber permitted to work on the tables and not retained on the airlines. No answer consistent with Respondent's claim herein presents itself.

(d) As appears below, Skinner claimed that he had not decided upon the termination of Jordon at the time he appeared at his office on April 2. This is hardly compatible with the Change of Status report which purports to support a decision to discharge Jordon because of the March 21 incident.

(e) Respondent was not reluctant to issue a correction notice on March 30 reflecting Jordon's smoking and loitering in the restroom. It would readily seem that the March 21 incident, if it took place as Respondent claims, was as serious if not more so, yet no correction notice was issued and Skinner did not even know whether he spoke to Brown about reprimanding Jordon. Indeed, Skinner conceded that it could well be that no one mentioned this purported major dereliction to Jordon. Even Brown, who was purportedly assigned to complete the task and had allegedly been reprimanded by Skinner for not completing the airlines project that morning, was unable to state whether he had ever mentioned the incident to Jordon.

(5) A consideration of the circumstances of Jordon's discharge and the variations in the testimony raises the suspicion that the termination notice of April 5 was an ex post facto document prepared by Respondent in an effort to bolster its position herein and was not a true reflection of Respondent's reason for terminating Jordon.

The document refers to Jordon as a trainee with Respondent from March 1 through April 13. The fact is that he started with Respondent well before March 1 and although the document may have been prepared on April 13 Jordon was not an employee at that time. The document further refers to Jordon being off "3 days straight" without notice to Respondent and Skinner tes-

tified in similar fashion. But it is undisputed that Jordon worked on March 31 and it obviously follows that he had been absent only one and one-half days at the time he appeared in the office on the afternoon of April 2. Moreover, as found, it is admitted that Jordon notified the appropriate authorities on April 1 with respect to his absence and, as found, he did likewise on April 2. Even here, Skinner, while claiming that Jordon did not have his permission to be absent, conceded that the permission of the plant foreman was sufficient and that he did not know whether Jordon had obtained it.

(6) Another inconsistency is the claim of Skinner that he realized within one or two weeks after Jordon was hired that he was not qualified as a maintenance man and decided to discharge him. Yet, Skinner further claimed that as of April 2, many weeks later, at the very moment Jordon entered his office with the advertisement for his replacement, he had not decided to terminate the man. Indeed, he allegedly had him under consideration for another post more suitable for him.

(7) Skinner contended that he did not intend to discharge Jordon and had him in mind for another post in the plant. But he did not offer him this or any other post or even mention it, and I, therefore, do not credit his testimony in this respect.

(8) Skinner testified that he contacted the employment agency which ran the advertisement a day or so before it appeared in the paper. He then testified that he might have contacted them 2 or 3 days before. Still later, in an obvious attempt to peg this to the Saturday incident of March 21, he testified that he either contacted the agency on Monday, March 23 or decided to make the contact on that date.

Totally aside from the obvious impossibility of reconciling this with the decision to terminate the man early in his employment, as well as the claim that there was no decision to terminate him prior to his appearance at the plant on April 2, this impels the conclusion that Respondent had decided to terminate Jordon prior to his absences on April 1 and April 2. The advertisement appeared in the April 1 issue of the paper and arrangements for the advertisement were surely made at the very latest on the morning of April 1, a date on which Jordon's absence was authorized. Indeed, it would seem that where Respondent was operating through an employment agency the contact of the agency was probably made prior to April 1.

The foregoing is highlighted by the fact that the March 21 incident so strongly relied upon herein by Respondent followed by only 4 days the occasion, on March 17, when Jordon disobeyed Respondent's instructions at the time of his hiring to refrain from union activities on penalty of punishment, proceeded to attend a union meeting, and was observed on the scene by Skinner. In view of this, together with the lack of substance to Respondent's contentions herein, I firmly believe, on a strong preponderance of the evidence, that Jordon was discharged because of his union activities.

I find that by discharging Elsworth Jordon on April 2, 1959, Respondent has discriminated with respect to the hire and tenure of employees within the meaning of Section 8(a)(3) of the Act. I further find that by the foregoing, Respondent has interfered with, restrained and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, within the meaning of Section 8(a)(1) thereof. However, I do not be-

lieve that there is substantial evidence in support of the allegation that Jordon's discharge was violative of Section 8(a)(4) of the Act and I shall therefore recommend the dismissal of that allegation.

#### IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in Section III above, occurring in connection with its operations set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. The remedy

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent has discriminated with respect to the hire and tenure of employment of Elsworth Jordon. I shall therefore recommend that Respondent offer him immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges. See *The Chase National Bank of the City of New York, San Juan, Puerto Rico, Branch*, 65 NLRB 827. I shall further recommend that Respondent make him whole for any loss of pay suffered by reason of the discrimination against him. Said loss of pay, based upon earnings which he normally would have earned from the date of the discrimination to the date of the offer of reinstatement, less net earnings, shall be computed in the manner established by the Board in *F. W. Woolworth Co.*,

90 NLRB 289. See *N. L. R. B. v. Seven-Up Bottling Co.*, 344 U. S. 344.

Because of Respondent's demonstration of its willingness to resort to unlawful methods to counteract an attempt by its employees to achieve self-organization through a labor organization of their own choosing, the inference is warranted that the commission of other unfair labor practices may be anticipated. It will therefore be recommended that Respondent be ordered to cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed by the Act. However, nothing in the recommended order is intended to require Respondent to rescind its insurance plan.

On the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### Conclusions of Law

1. United Steelworkers of America, AFL-CIO, and Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

2. Kit Manufacturing Company is an employer within the meaning of Section 2(2) of the Act.

3. By discriminating in regard to the hire and tenure of employment of Elsworth Jordon, thereby discouraging membership in a labor organization, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

4. By the foregoing, by threatening to shut down its plant in the event of union organization, by threatening employees with reprisals for engaging in union activities, and by promising and instituting benefits for employees in return for rejecting unionization, thereby



interfering with, restraining, and coercing employees in the exercise of the rights guaranteed by Section 7 of the Act, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce with the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not discriminated with respect to the hire and tenure of employment of Larry O'Brien, Jr.

7. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(4) of the Act.

#### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that Respondent, Kit Manufacturing Company, Caldwell, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in United Steelworkers of America, AFL-CIO or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or in any other labor organization of its employees, by discriminating in regard to hire or tenure of employment, or any term or condition thereof, except to the extent permitted under Section 8(a)(3) of the Act.

(b) Threatening to shut down its plant in the event of union organization, threatening employees with reprisals for engaging in union activities, or promising and instituting benefits for employees in return for rejecting unionization.

(c) In any manner interfering with, restraining, or coercing employees in the exercise of their right to self-

organization, to form, join, or assist any labor organization, to join or assist United Steelworkers of America, AFL-CIO or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a) (3) of the Act.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Offer to Elsworth Jordon immediate and full reinstatement to his former or substantially equivalent position without prejudice to seniority or other rights and privileges and make him whole for any loss of earnings suffered by reason of the discrimination against him, in the manner set forth in the section above entitled "The remedy."

(b) Make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to determine the amounts of back pay under the terms of this recommended order.

(c) Post at its plant at Caldwell, Idaho, copies of the Appendix attached hereto. Copies of said Appendix, to be furnished by the Regional Director for the Nineteenth Region, shall, after being signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter in conspicuous

places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said Appendix is not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for the Nineteenth Region in writing within twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order what steps it has taken to comply herewith.

It is recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report and Recommended Order Respondent notifies the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring Respondent to take the action aforesaid.

Dated this 6th day of January 1960.

/s/ MARTIN S. BENNETT,  
Trial Examiner.

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### Appendix

Notice of all employees pursuant to the recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not discourage membership in, or activity in behalf of United Steelworkers of America, AFL-CIO or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or any other labor organization of our employees, by discriminating in any manner in regard to hire or tenure of employment, or any term or condition thereof, except to the extent per-

mitted under Section 8(a)(3) of the Act.

We Will offer Elsworth Jordon immediate and full reinstatement to his former or substantially equivalent position, without prejudice to seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of our discrimination against him.

We Will Not threaten to shut down our plant in the event of union organization, threaten employees with reprisals for engaging in union activities, or promise or institute benefits in return for rejecting unionization.

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to join or assist United Steelworkers of America, AFL-CIO, or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the National Labor Relations Act.

All our employees are free to become or remain, or refrain from becoming or remaining, members of the above-named or any other labor organizations.

KIT MANUFACTURING COMPANY  
(Employer)

Dated ..... By .....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America  
Before the National Labor Relations Board  
Case Nos. 19-CA-1742, 1766

KIT MANUFACTURING COMPANY  
and

Case No. 19-CA-1815

UNITED STEELWORKERS OF AMERICA, AFL-  
CIO

and

BLUE MOUNTAIN DISTRICT COUNCIL, LUM-  
BER & SAWMILL WORKERS, AFL-CIO

DECISION AND ORDER

On January 6, 1960, Trial Examiner Martin S. Bennett issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the

exceptions and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.<sup>1</sup>

### Order

Upon the entire record in this proceeding and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Kit Manufacturing Company, Caldwell, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in, or activity on behalf of, United Steelworkers of America, AFL-CIO, or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or any other labor organization of its employees, by discriminating in any manner in regard to hire, tenure, or any term or condition of employment, except to the extent permitted under Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959;

(b) Threatening to shut down its plant in the event of union organization, threatening employees with reprisals for engaging in union activities, and promising and instituting benefits for employees in return for rejecting unionization;

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<sup>1</sup>The Trial Examiner rejected the Respondent's contention that Elsworth Jordon, one of the alleged discriminatees involved herein, in effect had quit and found that Jordon was discharged by Ray Skinner, the Respondent's general manager. In so finding, the Trial Examiner relied, in part, on an affidavit made by Skinner and submitted to a Board investigator. The Respondent excepted to the use of the affidavit on the ground that it was not part of the record. We find, as did the Trial Examiner, that Jordon did not quit but was discharged. However, in so finding, we do not rely on the affidavit, but on evidence in the record credited by the Trial Examiner.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, AFL-CIO or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959. -

2. Take the following affirmative action which, the Board finds will effectuate the policies of the Act:

(a) Offer to Elsworth Jordan immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings suffered by reason of the discrimination against him, in the manner set forth in the section of the Intermediate Report entitled "The remedy;"

(b) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social-security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts of back pay due and the right of employment under the terms of this Order;

(c) Post at its plant at Caldwell, Idaho, copies of the

notice attached hereto and marked "Appendix."<sup>2</sup> Copies of said notice, to be furnished by the Regional Director for the Nineteenth Region (Seattle, Washington), shall, after being duly signed by the Respondent's authorized representative, be posted by the Respondent immediately upon receipt thereof and be maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Nineteenth Region, in writing, within ten (10) days from the date of this Order, as to what steps the Respondent has taken to comply herewith.

It Is Hereby Ordered that the complaint herein be, and it hereby is, dismissed, insofar as it alleges any violations of the Act other than those found herein.

Dated, Washington, D. C. April 27, 1960.

BOYD LEEDOM,  
Chairman

STEPHEN S. BEAN,  
Chairman

[Seal]

JOHN H. FANNING,  
Member.

National Labor Relations Board.

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<sup>2</sup>In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."



## Appendix

Notice To All Employees Pursuant To a Decision And Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in, or activity on behalf of United Steelworkers of America, AFL-CIO, or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or any other organization of our employees, by discriminating in any manner in regard to hire or tenure of employment, or any term or condition thereof, except to the extent permitted under Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

We Will Not threaten to shut down our plant in the event of union organization, threaten employees with reprisals for engaging in union activities, or promise or institute benefits in return for rejecting unionization.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, AFL-CIO, or Blue Mountain District Council, Lumber & Sawmill Workers, AFL-CIO, or any other organization, to bargain collectively through representatives to their own choosing, and to engage in concerted activities for the purpose of mutual aid or protection as guaranteed in Section 7 of the Act, and to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as modified

by the Labor-Management Reporting and Disclosure Act of 1959.

We Will offer Elsworth Jordon immediate and full reinstatement to his former or a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of our discrimination against him.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named Unions or any labor organization, except to the extent that this right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act, as modified by the Labor-Management Reporting and Disclosure Act of 1959.

KIT MANUFACTURING COMPANY  
(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States Court of Appeals  
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,  
vs.  
KIT MANUFACTURING COMPANY,  
Respondent.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.116, Rules and Regulations of the National Labor Relations Board—Series 8, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case Nos. 19-CA-1742, 19-CA-1766 and 19-CA-1815. Such transcript includes the pleadings and testimony and evidence upon which the Order of the Board was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony taken before Trial Examiner Martin S. Bennett on September 15 and 16, 1959 together with exhibits introduced in evidence.

(2) Joint motion of parties to correct transcript of record, received October 20, 1959, together with motion in support thereof.

(3) Trial Examiner's telegrams, dated October 21, 1959, advising motion to correct transcript granted.

(4) Trial Examiner Bennett's Intermediate Report and Recommended Order dated January 6, 1960.

(5) Respondent's exceptions to the Intermediate Report and Recommended Order received, February 1, 1960.

(6) Decision and Order issued by the National Labor Relations Board on April 27, 1960.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 23rd date of September, 1960.

/s/ OGDEN W. FIELDS,

[Seal]

Executive Secretary,

National Labor Relations Board.

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Official Report of Proceedings  
Before the  
National Labor Relations Board

Certificate

This is to certify that the attached proceedings before the National Labor Relations Board in the matter of:

Name of Proceeding: Kit Manufacturing Company  
Caldwell, Idaho.

Docket No. 19CA1742, 1766 & 1815.

Place of Hearing: Canyon County Courthouse Caldwell, Idaho.

Date of Hearing: September 15 & 16, 1959, were had as herein appears, and that this is the original transcript thereof for the files of the National Labor Relations Board. [1]\*

PROCEEDINGS

Trial Examiner Bennett: The hearing will be in order. This is the formal hearing before the National Labor Relations Board, in the matter of Kit Manufacturing Company, cases 19CA1742, 1866 and 1815. The Trial Examiner conducting the hearing is Martin S. Bennett. I will ask counsel and other representatives to state their appearances for the record.

Mr. Henderson: I am Charles M. Henderson, 19th Region, 327 Logal Building, Seattle, Washington.

Mr. Smith: Austin Smith, representing United Steel Workers of America, 412 American Legion Building, Spokane, Washington, and for the purpose of receiving all formal papers in this matter, including the Trial Ex-

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\*Page numbers appearing at top of page of Original Transcript of Record.

aminer's Intermediate Report, Mr. Emil E. Nerrick, Assistant General Counsel, United Steel Workers of America, Pittsburg 22, Penn.

Trial Examiner Bennett: For Correspondent?

Mr. Weston: Ely A. Weston, 711 and one-half Bannock, Boise, Idaho, representing Kit Manufacturing Company.

Mr. Henderson: Mr. Examiner, I should also state, in connection with the appearances, that Mr. Weller, of the Lumber and Sawmill Workers, will be here presently, and I assume at that time he can make his appearance for the record. [4]

\* \* \* \* \*

Mr. Henderson: Then I would like to introduce . . . to present the General Counsel's formal papers which are rather voluminous, which are as follows: [5]

General Counsel's exhibit 1-A, the original charge in case No. 19CA1742; 1-B, Affidavit of service; 1-C, original charge 19CA1742; 1-D, Affidavit of service; 1-E, original charge 19CA1815; F, the affidavit of service; G, is the original complaint; a consolidated complaint, with the Order consolidating the cases and Notice of Hearing, and at that time it was only 19CA3242 and 3266.

(Reporter asks counsel to repeat last numbers)

Mr. Henderson: 19CA, capital "C" and Capital "A," 3242 and 3266. H, is affidavit of service; I, is an Order extending time for filing answer; J, affidavit of service, and K, is an answer to the consolidated complaint; 1-L, is an Order rescheduling the hearing to July 29, 1959, and the affidavit of service; 1-N, is the amended charge in case No. 19CA1742; 1-O, is the affidavit of service; 1-P, is the amended, consolidated complaint. It

still relates only to cases No. 19-CA-1742 and 1756; 1-Q, is the affidavit of service of that; 1-R, is the answer to the amended, consolidated complaint; 1-S, is the request by Respondents for rescheduling the hearing to September 15; 1-T, Order rescheduling hearing to September 15th; today; 1-U, affidavit of service; 1-V, second amended, consolidated complaint, which is in all three of our cases, 1742, 1756 and 1815; 1-W, affidavit of service; 1-X, Order extending time for filing answer; 1-Y, affidavit of service, and 1-Z, answer to the second amended, consolidated complaint. [6] Mr. Weston, I think, has had a chance to examine these papers and I offer them in evidence.

Mr. Weston: No objections.

Trial Examiner: I'll receive them.

\* \* \* \* \*

At this time, I would like to move to dismiss the complaint as to Archie Murray and Lyle Howard, which would involve, I should imagine, striking paragraphs seven and eight of the complaint, and deleting the names of Murray and Howard from paragraph eleven. I should like to explain that the reason that I am moving to dismiss as to these two individuals, is because neither of them is in town at the moment. [7]

\* \* \* \* \*

Trial Examiner Bennett: All right, the motion is granted. [8]

\* \* \* \* \*

Mr. Henderson: At this time, Mr. Examiner, Mr. Weller of the Lumber and Sawmill Workers of the Blue Mountain District, I think, is here. And I think he wants to enter an appearance here.

Trial Examiner Bennett: Will you state your name and address for the record?

Mr. Weller: E. A. Weller, representative of the Brotherhood of Carpenters, Box 8, Baker, Oregon.

Mr. Henderson: Mr. Russell Chandler also of the Carpenters I think wants to enter an appearance as well.

Trial Examiner Bennett: Have him do so then.

Mr. Henderson: Tell the reporter your name and address.

Mr. Chandler: Russell Chandler, secretary-treasurer of the Blue Mountain Council, District Council, Post Office Box 387, Baker, Oregon. [9]

\* \* \* \* \*

Direct Examination by Mr. Charles H. Henderson

ELSWORTH FRANKLIN JORDON

\* \* \* \* \*

Q. When did you go to work for the Kit Manufacturing Company?

A. In February of this year.

Q. Prior to that time, where had you been employed?

A. Fleetwood Trailer Company factory. [12]

\* \* \* \* \*

Q. And while you were at the Fleetwood, were you a member of any Union?

A. I was.

Q. Which Union was that?

A. United Steel Workers of America.

Q. And besides being a member of United Steel Workers had you engaged in any other activities for the Union? A. Yes.

\* \* \* \* \*



(Testimony of Elsworth Franklin Jordon.)

Q. Before you left Fleetwood and were employed at the Kit Manufacturing Company did you do such things as distributing cards or literature or anything like that?

A. You mean for Fleetwood?

Q. I mean at the Fleetwood plant?

A. Yes.

Q. What did you do?

A. Passed out cards and I got guys to join the Unions.

Q. Did you go to the Union meetings?

A. Yes.

Q. Now who hired you at Kit?

A. - Mr. Skinner.

Q. I see. Do you recall what day it was or about when [12A] it was that he hired you?

A. It was one night at the Stringbusters Lounge, more or less, in February. I don't recall what date, but it was around the first of February.

Q. Yes, and was that on the occasion of a Union meeting?

A. Yes it was.

Q. Where was the meeting held?

A. It was held in the Roundup Room at the Stringbusters Lounge.

Q. And when I say Union, I'm referring Union meetings which you attended. Now which Union was that?

A. That was the Steel Workers.

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Trial Examiner Bennett: You were hired on a particular night around the first of February?

A. Yes, somewhere around the first of the month. I din't recall which day it was.

Trial Examiner Bennett: You weren't working at that time?

A. No sir. I just quit Fleetwood then.

Q. (By Mr. Henderson): How did you happen to be talking to Mr. Skinner that night at the String-busters Lounge?

A. Well, Mr. Skinner and a whole bunch of guys was sitting around a table, and I come up to the meeting and I came up to the table and got to talking to them.

Trial Examiner Bennett: Had you known him previously? [13]

A. No, I hadn't.

\* \* \* \* \*

Q. (By Mr. Henderson): What was your discussion about?

A. It was about Unions and he was telling the guy what he could do for them and what he couldn't do.

\* \* \* \* \*

Q. Did you take any part in the conversation about the Unions?

A. I did.

Q. What did you say?

A. Well, I said "Ray, if he could do so much for the [14] guys," I asked if he could top what I was getting over at Fleetwood, and he said he could.

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Q. And this conversation where he hired you, was any mention of any Union or Union activities?

A. Well, he said if he hired me that he didn't want to have anything to do with the Unions whatsoever, and we had a pretty big argument there for a while about that. [15]

\* \* \* \* \*

Q. Do you recall whether or not it came up in the conversation which you had with him at that time?

A. I told him that I had signed a deal for the N.L.R.B. at Fleetwood.

Q. Well, I'm talking about the conversations in the Stringbusters Lounge in February.

A. Well, he knew that I had been going to meetings and all that.

Trial Examiner Bennett: How did he know that?

A. Well, two or three meetings when we would come out of the meetings, Mr. Skinner would be there.

Trial Examiner Bennett: And this was while you were at Fleetwood?

A. Yes, we came from Fleetwood over here to talk to the guys at Kit.

Trial Examiner Bennett: And where was the Steel Workers meetings usually held?

A. For Fleetwood or Kit?

Trial Examiner Bennett: Well, for Kit.

A. Well, they started off at the Saratoga room in the Saratoga Hotel and later they had them at the Roundup room at the Stringbusters Lounge, and that's when I started.

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Q. (By Mr. Henderson): Was this meeting that you're [16] talking about when Mr. Sinnner hired you, was that the first meeting that you had been to at the Stringbusters or had you been to others before that?

A. No, I had been to others before.

Q. Do you recall whether Mr. Skinner had been in evidence on those occasions?

A. He had been around the bar and seen us when we come out of the meetings, yes.

\* \* \* \* \*

Q. (By Mr. Henderson): Do you recall, incidentally, what your rate of pay was to be when you went to work for Kit? [17]

A. He said he would start me off at a dollar and a half an hour and raise me to a dollar and eighty cents in three weeks.

Q. Did you go to work for Kit?

A. I did.

Q. When did you go to work?

A. In February.

Q. How soon after the night we have been talking about?

A. The next day Mr. Skinner asked me to come over to his office; the next morning.

Q. I see. And did you go over to his office?

A. Yes.

Q. Did you have a conversation with him at that time? A. Yes.

Q. What was said at that conversation?

A. We went into his office and we set in there and we talked and he told me what job he was going to give me, and he said if I had anything to do with any

(Testimony of Elsworth Franklin Jordon.)

Union while I worked for Kit that he would blackball me from Kit.

Q. Incidentally, what was your job going to be there at Kit?

A. Maintenance man.

Q. Did he say anything else about the Unions?

A. You mean the next morning?

Q. Yes. In the conversation in his office? [18]

A. I don't recall, it's been so long.

Q. Did he say anything about Union meetings?

A. He said he didn't want me to attend any Union meetings, and that he wasn't telling me to but it would help if I talked against the Unions.

Q. And incidentally, what did you say to all that?

A. I told him I wouldn't have anything to do with any Union meetings while I was working there.

\* \* \* \* \*

Q. Up until say the middle of March, did you go to any Union meetings?

A. I did not.

Q. And what was your rate of pay at that time?

A. \$1.50 an hour.

Q. Now you have referred to Mr. Skinner's promise that you would be raised to \$1.80 after some period of time. That was within three weeks, did you say?

A. Yes.

Q. Were you raised that \$1.80? [19]

A. No I wasn't. I went and asked Ray for the raise and he said, "I'll raise you, I'll raise you off your butt on your feet if you don't get back to work."

(Testimony of Elsworth Franklin Jordon.)

Q. And you were not raised to \$1.80 an hour?

A. No, I wasn't.

\* \* \* \* \*

Q. After that, did you attend any Union meetings?

A. I did.

Q. Specifically, do you specifically recall which ones you attended?

A. The first one was March 17.

Q. And how many after that?

A. It was two more in March, one the 24th and one the 31st.

\* \* \* \* \*

Trial Officer Bennett: As I understand it, you went to your first Union meeting after this conversation with Mr. Skinner that you just told us about?

A. Yes. [20]

\* \* \* \* \*

Q. (By Mr. Henderson): Prior to March the 17th did you have any . . . or do you recall having any conversation with Mr. Skinner at which the subject of your attending Union meetings came up?

A. The night after the meeting broke up, I remember talking to Mr. Skinner.

Q. Now are you referring to the meeting on March the 17th? A. Yes.

Q. No, I mean prior to that time. Did any conversation in the plant take place? Do you recall any?

A. Well, it was when Mr. Skinner told me that he heard that I had been going to Union meetings.

Q. What did you say to that?

A. I told him that I had not been going to any Union Meetings.

(Testimony of Elsworth Franklin Jordon.)

Q. And up to that time, had you been going to any Union meetings? A. No.

Q. Can you pin that down at all? Can you remember about when it was that he asked you that question?[22]

A. No, I don't recall but it was about the first of March anyway.

Q. Do you recall where it was?

A. It was inside the plant over there near the time clock.

Q. Now you have already testified that you attended Steel Workers meetings on March 17, 24 and 31st?

A. Yes.

Q. Where were the meetings held?

A. In the Stringbusters Lounge in the Roundup room.

\* \* \* \* \*

Q. And was Mr. Skinner in evidence at any of those meetings?

A. He was at the 17th, when I came out of the meeting.

Q. Where was he?

A. At the Stringbusters Lounge.

\* \* \* \* \*

Trial Examiner Bennett: This meeting that you held in the Stringbusters Lounge, was this a group of you at a table or what was it?

A. They have a special room at the back where they rent it out for Union meetings and social parties and things like that, and they have a big table in there just like that. [23] (indicating counsel table). [24]

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Q. Well, let's see. You say that Mr. Skinner was in the bar the night of March 17th meeting?

A. Yes.

Q. Did you have any other conversation with Mr. Skinner that night?

A. I remember talking to him, yes. [25]

\* \* \* \* \*

Q. How about the March 31st one?

A. I believe he was at the 31st one. I'm pretty sure he was.

\* \* \* \* \*

Q. Incidentally. . . now, while you were working there as maintenance man at Kit, who did you report to? Who was directing your work?

A. I believe his name is Chick Lang or something like that.

\* \* \* \* \*

Q. (By Mr. Henderson): During a couple of months February and March, while you worked there, did Mr. Lang ever [26] discuss your work with you?

A. Well, there was one time that he said I was getting along pretty good with my work but that I had a little bit to learn about electrical maintenance, but as far as that I was doing fine.

Q. Did he ever criticize your work?

A. No, sir. He didn't.

Q. I'll ask the same question about Mr. Skinner or any other representatives of Kit Manufacturing?

A. I recall Mr. Skinner down at the Stringbusters one night, he told me that I was doing a pretty good job, so just to keep it up.



(Testimony of Elsworth Franklin Jordon.)

Trial Examiner Bennett: How long had you been there when he said that to you?

A. Oh I think I had been there about three weeks, I would say.

\* \* \* \* \*

Q. (By Mr. Henderson): Well now, how about your conduct. Were you ever criticized about that?

A. Mr. Skinner said that I had been smarting off to the formans which I don't recall smarting off to any of the formans that I took orders from, and I took orders from all of them.

\* \* \* \* \*

Q. Did Mr. Lang or Mr. Skinner or any other representa[27]tive of Kit Manufacturing ever warn you that you might be discharged?

A. No, not that I recall.

\* \* \* \* \*

Q. Were there any days when you were not present, say for the whole day or half a day?

A. Yes, I took off two half days during that March.

Q. And what did you do about notifying the company when you did that?

A. Well, the first day when I took off I asked Mr. Lang if I could take a half day off, that I had a bill come up from Montgomery Wards to pay them off, so I went and borrowed the money to pay them off because they were coming up to garnishee my wages.

Q. Now you say that you explained that to Mr. Lang?

A. Yes, I did.

Q. What did he say?

A. He said that it was o.k.

Q. What was the other half day? [28]

(Testimony of Elsworth Franklin Jordon.)

A. I took my baby to the doctor in Homedale.

Q. Who did you speak to about that if anyone.?

A. I think it was Mr. Lang again.

Q. Now what did he say at that time?

A. He said it was o.k. I think he said on the last one that he'd ask Ray about it. Anyway, he came back and told me it was o.k. if I went.

Q. When you say Ray, you mean Ray Skinner?

A. Yes.

\* \* \* \* \*

Q. (By Mr. Henderson): Do you recall anyone from the management ever talking to you and giving you a warning or criticizing you about your attendance?

A. No sir, I don't recall that.

\* \* \* \* \*

Now directing your attention to April the 1st, did you work on that day?      A. No sir, I didn't.

Q. Had you worked the day before that?

A. Yes. [29]

Q. Why didn't you work on April the 1st?

A. I went to the doctor for my feet.

Q. You have a foot condition?

A. Yes, I do.

Q. And what notice did you give the company about going to the doctor?

A. I called in that morning and talked to Mr. Lang and he said it would be o.k., that he would tell Mr. Skinner.

Q. What did you go to the. . . did you go to the doctor that morning?      A. Yes, I think I did.

Q. Did you go that day or the next day?

(Testimony of Elsworth Franklin Jordon.)

A. I think it was the next day that I went to the doctor.

Q. What did you go about, was it your foot on April 1?

A. I have some of these little pills that I had gotten from another doctor which you soak your feet in. I don't recall the name of them but they leave a sort of a blue stain on your feet. Creates perspiration and all.

Q. So that day you soaked your feet you say, but how about the next day? Was your foot any better?

A. No, they wasn't.

Q. Did you work the next day then?

A. No, I didn't.

Q. What did you do about calling the company or letting [30] the company know that you were not going to work on April the 2nd?

A. I called in on April the 2nd and the girl in the office answered th phone and she said o.k., that I'll tell them.

Q. Do you recall her name?

A. No, I don't, but I think she's the personnel girl.

Q. Do you recall what words she used? Did she say, "I'll tell Mr. Skinner or Mr. Lang" or "I'll just tell them"?

A. I think she said that I'll tell them was what she said.

Q. Now on that date did you go to the doctor?

A. I believe I went that day, yes, but I'm not positive.

Q. Which doctor was that?

A. Doctor Shanahan. [31]

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Q. Did you later on that day, did you go to the plant?

A. Yes, I did.

Q. Was that before or after you had seen the doctor, or do you recall?           A. I don't recall that.

Q. Why did you go to the plant?

A. Well, I was settin' at home and I seen a news clipping in the local paper saying that they wanted sheet metal men and a maintenance man at Kit Manufacturing Company and I cut the clipping out and took it over, and I asked Mr. Skinner about it; I told him I called in both mornings at the desk. . . .

\* \* \* \* \*

Trial Examiner Bennett: Will you fix the time of that?

A. I believe it was around 2:30 or something like that.

Trial Examiner Bennett: Now, this is on the afternoon of April the 2nd?           A. Yes. [32]

\* \* \* \* \*

Mr. Henderson: That's what I proposed to bring out in his testimony. Mr. Jordon, this is General Counsel's Exhibit No. 2 for identification which I am now handing to you, will you tell us here briefly what it is and particularly the newspaper clipping attached to the piece of yellow paper?

A. This is the same clipping that I took to Mr. Skinner. [33]

\* \* \* \* \*

Q. (By Mr. Henderson): Now Mr. Jordon, what was it about this piece of paper, which you were concerned about, which made you go in to see Mr. Skinner?

(Testimony of Elsworth Franklin Jordon.)

A. Well, the maintenance man's job, that's my job, at the plant, and I went in and asked Mr. Skinner about it, and I asked Mr. Skinner and he said, "Jordon, you . . . ."

Q. Now wait just a minute before you get into the conversation. Let me pin this down a little more. This [34] clipping was in what paper?

A. I don't know whether it was the Tribune or the Caldwell Times, but I was taking both of them at the same time.

Q. Now which is the morning paper and which is the evening paper?

A. They're both evening papers.

Q. -I see. Neither paper comes out in the morning then?

A. No, it comes out, I think, around two o'clock in the afternoon.

Q. When did you read it?

A. I read it, oh, I would say around one something, one thirty, I think.

Q. On April 2nd? A. Yes.

Q. Yes.

A. No, I read it. . . .yes, it was on April the 2nd.

Q. The same day that you saw Mr. Skinner?

A. Yes.

Trial Examiner Bennett: You say you went to see Mr. Skinner, did you bring the clipping along with you?

A. Yes.

Q. Did you show him the clipping? A. Yes.  
[35]

Q. Well, tell us the conversation between you and Mr. Skinner at that time?

(Testimony of Elsworth Franklin Jordon.)

A. Mr. Skinner said I had been terminated, that I was taking off too much time.

Q. Just a minute, how did the conversation start?

A. I asked him what the deal was on that and if I was fired.

Q. What did he say?

A. He said, "Yes, Jordon, you have been determined."

\* \* \* \* \*

Mr. Henderson: He means terminated. What did he say after that and what did you say?

A. I asked him what the reason for it was and he said "You've been taking off too much time and you have been staying over time to do your work." I think he was referring to one Saturday that we had to lift the pipe off the floor and put it overhead. It was an air line and I had to come in that Saturday and do it, and I think he was referring to that time.

Q. Did you make any explanation to him at that time of that incident?

A. No, I don't believe I did, sir.

\* \* \* \* \*

Q. Did he refer to anything else or any other reason for terminating you, in that conversation? [36]

A. No sir, I don't recall of any.

Q. Did he criticize the quality of your work?

A. He never said anything more than that to me then and he went in and got my checks. [37]

\* \* \* \* \*

Q. Well now, you stated, I think, something about his giving you your checks or having your checks made out. What happened in that respect?

(Testimony of Elsworth Franklin Jordon.)

A. Well, Mr. Skinner called the girl in the office and said, "Get Jordon's checks for him," and I told him I had to get my tools at the plant, and after he handed me the checks we walked back through the plant and I got my tools. [38]

\* \* \* \* \*

Cross-Examination by Mr. Weston [40]

\* \* \* \* \*

I'll ask the question a little differently. As a maintenance man, you would be called upon to correct or repair any electrical defect, is that correct?

A. Yes.

Q. -Could you re-wind a motor, for example?

A. No sir. They took all the motors. . . .

Q. I just want you to answer my question.

A. No sir, I didn't.

Q. Then you couldn't re-wind a motor then?

A. No, I can't.

Q. Do you have a knowledge of blueprints and the methods by which motors and electrical equipment are taken down and put together again? A. No sir.

Q. Have you ever had any training in that line?

A. No sir.

Q. Well, what about plumbing? Could you do any plumbing?

A. Yes, I could do a little plumbing.

Q. Have you ever qualified as a plumber?

A. No sir. [43]

\* \* \* \* \*

Trial Examiner Bennett: You were asking him if he

(Testimony of Elsworth Franklin Jordon.)

had to have a knowledge of a little of everthing in the plant in order to be a maintenance man.

A. (By witness): Yes.

Q. (By Mr. Weston): So in order to qualify as a maintenance man, you would have to be able to correct anything that went wrong in the plant whether it was electrical, [44] plumbing, engineering or anything in the plant.

A. To a certain extent, yes.

\* \* \* \* \*

Q. But you never worked as a maintenance man before?      A. No sir, I haven't.

Q. I would like to go back, Mr. Jordon, just a minute if I may to this conversation you had with Mr. Skinner when he hired you to come over and work for Kit Manufacturing Company. I believe you stated that he said that he could give you a job over there and start you out at \$1.50 and raise you to \$1.83?

A. No, \$1.80.

\* \* \* \* \*

Q. And in this discussion with you he suggested that [45] he wished you would have nothing to do with the Union, is that right?      A. Yes.

Q. And that was agreeable to you?      A. Yes.

Q. Were you perfectly sincere about that?

A. Yes.

Q. You intended to completely abandon the Union at that time?

A. Yes. If he had stuck to his promise.

\* \* \* \* \*

Trial Examiner Bennett: You said that when you



(Testimony of Elsworth Franklin Jordon.)

had this conversation, I thought you said when you had this conversation you were not working at Fleetwood?

A. Well, I quit the day before.

Trial Examiner Bennett: The day before the conversation with Skinner? A. Yes. [46]

\* \* \* \* \*

Q. As a matter of fact, three days before you discharge or laid off, you hadn't worked those three days had you?

\* \* \* \* \*

Q. Did you ever get a clearance from Mr. Skinner or Mr. Lang to stay home these days when you stayed the full days?

A. -I did the first from Mr. Lang and from the girl in the office on the second time.

\* \* \* \* \*

Q. But you knew that you were supposed to get your release from your supervisor, of course.

A. Well, I called in and none of them was around.

Q. That isn't answering my question.

A. Well, if he's not there I wouldn't get one.

Q. Do you recall or [48] do you know what the rules of the company were in regard to getting time off?

A. Yes.

Q. Do you have one of these little pamphlets here? (indicating pamphlet in hand)

A. No, I never got one of those.

Q. But you did get one of these pamphlets?

A. Yes, I did know that. I know you're supposed to call in in the morning.

Q. To get a release from your supervisor?

(Testimony of Elsworth Franklin Jordon.)

Trial Examiner Bennett: I don't think he finished the answer.

A. (By witness): Nobody told me that it had to be the supervisor or anything, they just said you just call in and tell them so they'll know you won't be there.

\* \* \* \* \*

Now I believe that you testified here just a few minutes ago that you know that you were supposed [49] to report to your supervisor when you took time off. Now is that or is that not true?

A. No sir. I don't recall that. I know when I first went to work there that Mr. Skinner told me the rules and he said to call in so I'll know you won't be there.

Q. So he'll know?           A. Yes.

\* \* \* \* \*

Q. Now Mr. Jordon, were you ever criticized for smoking and loitering around the rest rooms?

A. Yes. [50]

\* \* \* \* \*

Q. Were you warned about that?

A. Yes.

Q. Were you asked to sign a correction notice?

A. Yes.

Q. Did you refuse to do that?           A. Yes.

\* \* \* \* \*

A. I don't recall of any.

Q. You can't recall it?

A. No sir.

Q. But there might have been?

A. I wouldn't say there was.

Q. But you don't recall?

(Testimony of Elsworth Franklin Jordon.)

A. I don't recall telling them I wouldn't do anything.

Trial Examiner Bennett: So the witness is clear on this, there is a difference in saying that you don't recall something and on the other hand saying something did not happen.

A. Well, I don't remember then.

Q. (By Mr. Weston): Did you ever report to Mr. Skinner or any of the supervisors of the company that you had this foot ailment? [51]

A. No sir.

\* \* \* \* \*

Q. Do you know, Mr. Jordon, that the company has a doctor to which they refer their employees?

A. Yes, I know they do.

Q. And you never asked to be referred to that doctor?

A. No sir, because I had my own doctor.

Q. I believe you testified that one of the times that you took the day off was to take care of a garnishment action? A. Yes.

Q. What was that about? The garnishment of your wages out there a Kit?

A. Well, he came to my house and gave me a warrant to appear in court in, I think, 20 days, or straighten it up and I asked Mr. Lang if I could take off and straighten it up, and I went and borrowed the money to pay it off.

Q. You took time off from the Kit Manufacturing Company to handle this personal matter?

A. Yes, Mr. Lang give me the time off. [52]

\* \* \* \* \*

Q. Now this Stringbusters meeting place, apparently that is a place where they not only have meetings they all

(Testimony of Elsworth Franklin Jordon.)

go down and have a few drinks? A. Well. . . .

Q. Well, what is the Stringbusters anyway?

A. It's a lounge.

Q. It's a lounge? A. Yes.

Q. Do you have some of your official meetings there once in awhile?

A. In the room in the back of the lounge, yes.

\* \* \* \* \*

Q. So you would be meeting in the back room while Mr. Skinner could be out in the other room?

A. He could be out at the bar, yes.

Q. Is there a bar out in the other room?

A. Yes, when you come into the Stringbusters, you come [55] into the restaurant and then you have a lounge back here, a bar and a Round-Up room is back further.

Q. Back further is the Round-Up room?

A. Yes.

Q. The Round-Up room is back further and that's where you had your official meetings? A. Yes.

Q. Is that the only place you had meetings?

A. No sir, we had meetings at the Saratoga Hotel. That's when I was working for Fleetwood.

\* \* \* \* \*

Q. How many meetings did they have down at the Stringbusters?

A. I don't know. I just know the last three I went to.

Q. What was the first meeting that you went to after going to work for Kit?

A. It was March 17th.

(Testimony of Elsworth Franklin Jordon.)

Q. I believe you testified after some of these meetings down at the Stringbusters that you would come out and Mr. Skinner would be there sitting in the lounge?

A. Yes [56]

\* \* \* \* \*

Q. And you would discuss Union matters with him?

A. Yes, I think we all did.

Q. Now just one more question, Mr. Jordon. I know this may be difficult to answer, but can you think back and give us a little more accurate date as to the exact day you were terminated out there? Wasn't it after April the 5th?

A. It was April the 2nd.

\* \* \* \* \*

Redirect Examination by Mr. Henderson [57]

\* \* \* \* \*

Q. Now as to the practice in the plant of calling in and such as that, Mr. Weston asked you some questions about this. Did you ever. . . did Mr. Skinner ever tell you what you were supposed to do about calling in if you weren't going to be at work? [58]

A. The morning I was in the office, all I recall that Mr. Skinner said was "If you're not going to be here, Jordon, just call in."

Q. Call in? A. Yes.

Q. Did he tell you whom to call?

A. No, because I didn't know which one was my boss—Skinner or Mr. Lang.

Q. Well, Mr. Weston asked you the same question, did he tell you to call any specific person?

A. No sir.

(Testimony of Elsworth Franklin Jordon.)

Q. Now there may be some confusion here as to exactly what specific date it was that you were hired. Did the company ever give you any notice indicating your termination? A. They wouldn't give me one.

Q. So you don't know what's in the record about that? A. No sir, I don't.

Q. But how many days had you been off before you went in to see Mr. Skinner with the clipping in your hand?

A. That was the second day that I was off.

Trial Examiner Bennett: I believe that you said you were home the first day soaking your foot. Is that right?

A. Yes.

Trial Examiner Bennett: And the second day you went to the doctor? [59]

A. I went to the doctor and that evening after I received the clipping in the paper, I took it over to Mr. Skinner, yes.

Trial Examiner Bennett: Is it the same day that you went to see the doctor that you went over and took the clipping to Mr. Skinner? By evening you mean that afternoon?

A. Yes, that afternoon was when I went over to see Mr. Skinner. [60]

\* \* \* \* \*

Q. Mr. Examiner, I hate to belabor this point but I feel that I must ask one or two more questions to clarify this question of taking time off, if I may. I want to ask you this question, Mr. Jordon. The time that you discovered this article in the newspaper was when you had already taken two days off or in your second day off?

A. Yes, it was in the second day. [61]

\* \* \* \* \*

(Testimony of Elsworth Franklin Jordon.)

Q. Now up to the time when you asked for the \$1.80 an hour and had been refused, can you give an approximation of that date again?

A. No sir, I can't.

Q. Well, I think you have testified that it was somewhere along in March.

A. Yes, March.

Q. The 17th or 18th of March or in that area?

A. No sir, it was before then.

Q. But you, up to that time, you hadn't taken any days off without consent, had you?

A. No sir.

Q. You weren't too happy when you didn't get the \$1.80, were you?

A. No sir, I wasn't.

Q. And you decided to start going back to the Union meetings again?

A. Yes. [62]

\* \* \* \* \*

Direct Examination By Mr. Henderson

BILLY WILLIAMS [63]

\* \* \* \* \*

Q. (By Mr. Henderson): Were you working for Kit last winter?

A. Yes.

\* \* \* \* \*

Q. (By Mr. Henderson): Now there has been some testimony here as to some conversations after a Union meeting between Mr. Skinner and Mr. Jordon? Were you present at that conversation?

A. I was.

Q. Do you recall Mr. Skinner . . . do you recall the subject of a job for Jordon coming up?

(Testimony of Billy Williams.)

A. All I remember is he said he could top anything Fleetwood paid him.[64]

Q. Do you recall him saying anything about Unions at Kit?

A. He said he could do more than any Union could do down there.

\* \* \* \* \*

Q. Did you go to any meetings of the employees called by Mr. Skinner?

A. Yes, I went to one.

Q. Was the subject of that conversation in that [65] meeting?

Mr. Weston: Could we have the date and place?

Q. Do you recall when it was?

A. I believe it was in March.

Q. Where was it held?

A. It was in the plant in the office up over the time clock, in a little office up there.

Q. I see. And whose office was it, or do you remember?

A. I guess it was Skinner's, I don't know.

Trial Examiner Bennett: Who went to the meeting?

A. All the finish crew.

\* \* \* \* \*

Q. Do you recall anything said on that occasion about Unions?

A. He said he could do more for anybody in that plant than the Union could do if they would count on him.

\* \* \* \* \*

Q. (By Mr. Henderson): Do you recall him mentioning [63A] anything about women working for him?



(Testimony of Billy Williams.)

A. He said that if the Union come in that he couldn't afford to pay women Union scale for a man's work.

Q. Do you recall anything else he said on that occasion?

A. He said if the Union come in, that place would be closed and nobody would have a job.

Q. Now during March, did you go to any Union meetings?

A. Yes, I went to all of them.

Q. And there has been some testimony here about a meeting on March 17th. Do you recall whether you saw Mr. Jordon at that meeting?

A. Yes, I did.

Q. I see, and do you recall seeing Mr. Skinner on that occasion?

A. Yes, I did. [64A]

\* \* \* \* \*

Q. Incidentally, on March 24th or March 31st, do you recall whether or not Mr. Jordon was present?

A. Yes, he was present at all three meetings. [65A]

\* \* \* \* \*

Q. (By Mr. Weston): He stated that he couldn't afford to pay it or words to that effect.

Trial Examiner Bennett: Did he use words like that; [69] that the company could not afford to pay it? That's the question. A. Yes.

Q. (By Mr. Weston): Well, first he claimed that you were not getting enough work done, is that right?

A. That's right.

Q. I believe that's all I have.

\* \* \* \* \*

Direct Examination by Mr. Henderson

DONALD W. JESSEN

\* \* \* \* \*

Q. Did you formerly work for Kit Manufacturing Company?      A. Yes, I did.

Q. From when to when was that?

A. I was first employed the latter part of December [70] and the first part of January due to the holiday and I quit there about April the 29th, I believe.

Q. Did you sign up with the Steel Workers Union?

A. Yes.

Q. Did you go to the meetings of the Steel Workers?      A. Yes.

Q. About how many did you go to?

A. As many as I could attend due to sickness and other things.

Q. About how many was that?

A. All of them in March, I think I missed two meetings altogether.

Q. I see, and were those meetings all in the Stringbusters Lounge?

A. Yes, except for the one at the Saratoga which I did attend.

Q. Yes, and did you ever observe Mr. Skinner in the bar outside at those meetings?      A. Yes.

Q. About how many times?

A. Three or four times.

Q. Did you talk to him on those occasions?

A. Yes, I did.

Q. Did he talk to everybody there?

(Testimony of Donald W. Jessen.)

A. Everyone that he seemed to know he spoke to and [71] bought them a drink.

\* \* \* \* \*

Q. (By Mr. Henderson): Tell me, did you go to any meetings that Mr. Skinner called where Unions were discussed? Meetings of the employees?

A. Yes, I did.

Q. When was that?

A. That was in March in his office.

\* \* \* \* \*

Q. How many employees were there?

A. All of the finishing crew.

Q. Was that the same meeting that Mr. Williams testified about? A. Yes, it was.

\* \* \* \* \*

Q. (By Mr. Henderson): Do you recall what Mr. Skinner said on that occasion about Unions? [72]

A. Regarding Unions he stated the fact, as he put it, that the Kit plant here in Caldwell was under, in no way, supported by the manufacturing company in California, and that if the Union did come in they would be unable to keep the plant open and he would have to close it down and everyone would lose their jobs.

Q. Do you recall anything else he said about Unions?

\* \* \* \* \*

A. He said that he would take and dismiss the women as . . . that men were able to do more work; heavier work and could combine the jobs and, therefore, that the women would be getting the same amount of pay and doing less work.

(Testimony of Donald W. Jessen.)

Trial Examiner Bennett: Were there any women in the finishing crew? A. Yes, there were.

Trial Examiner Bennett: Among those in the office on that occasion we're speaking of? A. Yes.

Q. (By Mr. Henderson): Now I want to direct your attention to March 17th. Did you go to a Union meeting on [73] that night? A. Yes, I did.

Q. At the Stringbusters Lounge? A. Yes.

Q. Did you see Mr. Skinner that night?

A. Yes, I did.

Q. Did you have a conversation with him that night? A. Yes.

Q. Will you describe what the conversation was . . . excuse me, before I say that, was anyone else present while you were there talking?

A. No sir. I just come from the Union meeting, and I walked out into the bar and he was sitting there and he invited me to sit down and have a drink so I sat down and we started talking and he said, "Don, why do you want a Union?" and I said, "Well, sir, they have give me a greater advantage to negotiating as far as wages are concerned, and it's better working conditions and better for me and I believe sincerely for the plant."

Q. What did he say to that?

A. He said, "If you'll string along with me, I can do more for you than any Union." He said, "I know you're happy making a \$1.45 an hour and you wouldn't be making that all the time, but if you string along out here with me and help us, we'll help you" and he said, "You won't be making [74] that \$1.45, you'll be beating that."

(Testimony of Donald W. Jessen.)

Q. Do you recall anything else he said about Unions?

Trial Examiner Bennett: That's on March 17th.

Q. Yes, in this same conversation in at the bar on March 17th?

A. Yes, he said that "You may have signed one of those cards, and I don't know, but I have a list of the names back up there. I know you're not happy making \$1.45 an hour." He says, "I have a list of names that I haven't gotten to yet," and he said, "It's always nice to know what the opposition has to offer so I won't be wasting my time." He said, "I find out these things so I kinda' know what's going on an kinda' steer these people straight." [75]

\* \* \* \* \*

Cross-Examination by Mr. Weston

\* \* \* \* \*

Q. Coming back to this meeting where he had all the finishing crew in the office. I believe you testified that he told you at that time that this plant out here was more or less self supporting?

A. Yes, he did.

\* \* \* \* \*

Q. Did he explain that to you that that plant out here had to make a go of it or it would have to close?

A. He said that if the Union came in he couldn't pay the wages and the plant would have to be shut down. [77]

\* \* \* \* \*

Q. Do you believe he was sincere in that statement?

(Testimony of Donald W. Jessen.)

A. I believe anyone is entitled to his opinion.

Q. In other words, he was giving you his views compared to your views on the general subject of Unions? A. Yes. [80]

\* \* \* \* \*

Direct Examination by Mr. Henderson

LARRY O'BRIEN, JR.

\* \* \* \* \*

Q. (By Mr. Henderson): And last winter were you employed by the Kit Manufacturing Company?

A. Yes. [81]

\* \* \* \* \*

Mr. Henderson: It's stipulated between Mr. Weston and myself that Mr. O'Brien was hired November 24, 1958.

Trial Examiner Bennett: He started working there then? A. (By Witness): Yes.

Trial Examiner Bennett: Is that agreeable?

Mr. Weston: Yes, it is.

\* \* \* \* \*

Q. (By Mr. Henderson): When you went to work there, was there any Union which represented the employees? A. No, there wasn't.

Q. Was there any Unions who were conducting an organizing campaign? A. Yes.

Q. Which Unions were they? [82]

A. The United Steelworkers was the first one.

Q. What other unions were there?

A. And the Carpenters intervned and also the Sheet Metal Workers.

(Testimony of Larry O'Brien, Jr.)

Q. Did you sign a card for any one of these organizations? A. Yes.

Q. Which one of them? A. Steel Workers.

Q. Do you recall about when you did that.

A. No, I don't recall the exact date.

Q. Besides signing a card, did you engage in any activity on behalf of the Steel Workers?

A. Outside the plant, yes, after I was fired.

Q. Let's talk first of all about the time before you were fired. What did you do on behalf of the Steel Workers? A. Passed out cards.

Q. Within the plant? A. Yes. [83]

\* \* \* \* \*

Q. When you passed out these cards, Mr. O'Brien, what did you do? That question isn't clear. Let me withdraw it. Did you physically hand the cards to the man you were talking to?

A. Most of the time. He knew that I had the cards and he would ask me for the cards.

Q. What would you do?

A. I would give him the card.

Q. What would he do with it then?

A. Sign it and return it to me at night at quitting time. [84]

\* \* \* \* \*

Q. (By Mr. Henderson): Now Mr. O'Brien, I want to direct your attention to January 22nd. Did you go to a Union meeting that evening?

A. Yes, I did.

Q. Where was the meeting held?

A. In the Saratoga Hotel. [100]

\* \* \* \* \*

(Testimony of Larry O'Brien, Jr.)

Q. Now, at or after that meeting, did you have a conversation with Mr. Skinner?

A. Yes, we did.

\* \* \* \* \*

Q. Where was the conversation?

A. It was in the Saratoga bar.

Q. And will you just tell us what was said?

A. First of all, he asked us how the meeting was going and we told him fine, [101]

\* \* \* \* \*

Q. I have marked for identification General Counsel's Exhibit No. 4, and I'll show it to you, Mr. O'Brien. Are these the company rules he handed to you?

A. Yes, just a minute I'll find it.

Q. Well, before you find that, I'll find it.

Q. Well, before you find that, I'll offer these rules in evidence.

A. Yes, this is it.

Q. I'll offer these rules in evidence.

Mr. Weston: We have no objection.

Trial Examiner Bennett: They may be received.

[106]

\* \* \* \* \*

Direct Examination By Mr. Henderson

COLLE MCKENZIE [119]

\* \* \* \* \*

Q. Where do you work?

A. Kit manufacturing Company.

\* \* \* \* \*



(Testimony of Colle McKenzie.)

Q. How long have you been employed there?

A. Since February.

Q. And during June do you recall going to any meetings that were conducted by Mr. Skinner? Meetings of employees where Unions were discussed?

A. Yes, I do.

Q. How many of those meetings were there?

A. There was one in June and there was two before.

Q. Do you recall any Union elections being held in June?           A. Yes.

Q. Do you recall what day they were?

A. June the 4th and June the 24th.

Q. Well now, how long before the June 4th election [120] were the first two meetings held?

A. The week before, I believe.

Q. The week before? About how many employees attended those meetings?

A. About a dozen, twelve, I guess.

Q. At each meeting, is that right?

A. Yes.

Q. Where were the meetings held?

A. In Ray's office, in the center of the shop.

Q. And still talking about these, say the first of these meetings, do you recall what Mr. Skinner said there in his office? How did he open the meeting?

A. Oh, about that they didn't need a Union there at the plant, that they felt it was actually too soon for a Union and they would rather wait awhile before Union activities started in the plant at all.

Q. Well, what else did he say if anything?

A. Oh, he told us that we shouldn't go to Union

(Testimony of Colle McKenzie.)

meetings and we should let the plant ride and stick with the plant for at least another year and see how things came out then because things would be better.

Trial Examiner Bennett: Are you still working there by the way?           A. Yes, I am.

Q. (By Mr. Henderson): Can you recall anything else [121] he said?

A. Yes, he brought up about the women, that if he had to pay men's wages for women that he would let the women go and hire men in their place.

\* \* \* \* \*

Q. Well now, can you remember anything else he said?

A. Yes, he told us that before he would pay Union wages; what the Kit plant has on the coast, that he would. . . us that voted, that he would know who voted and he would let us go.

\* \* \* \* \*

Q. (By Mr. Henderson): Did he say anything about insurance at this time?           A. Which meeting?

Q. This meeting before the June the 4th election.

A. Yes, there was. [122]

Q. What did he say?

A. He said that he had been trying to get insurance for us at the plant here but he said that it would probably be a year but he would work on it and see if he couldn't get it sooner.

\* \* \* \* \*

Q. The second meeting was that also before the June 4th election?           A. Yes.

(Testimony of Colle McKenzie.)

Q. Do you recall what was said at that meeting?

A. It was just about the same.

\* \* \* \* \*

Q. Now at the meetings around the time of the June 24th election, did you go to one of those?

A. Yes. [123]

\* \* \* \* \*

Cross-Examination by Mr. Weston

MR. McKENZIE

\* \* \* \* \*

Q. Now on this insurance, you were present on the 24th meeting, that's the day of the election?

A. Yes.

Q. And do you recall when Mr. Skinner explained to you about the insurance, did he say anything to you about having some cards there to give to you to sign and that they had to be returned to Oakland. . . to San Francisco . . . to Long Beach that next day or two? Did he express the urgency of getting the cards signed immediately?

A. Yes. [127]

\* \* \* \* \*

Q. So what he was doing on the 24th was fulfilling what he stated about getting you some insurance?

A. Yes.

Q. Did you sign a card yourself?

A. Yes, I did. [128]

\* \* \* \* \*

Trial Examiner Bennett: You said he referred to

(Testimony of Colle McKenzie.)

the 24th to the insurance plan that he had discussed with you previously, when was the first time that the insurance plan was brought up?

A. The first time I heard about it was the first [128] meeting we held before the June the 4th election.

Q. (By Mr. Weston): Before the first election?

A. Yes, that's right.

Trial Examiner Bennett: How long was that before that elections? A. About a week.

Trial Examiner Bennett: That's the first you heard of the insurance plan?

A. Yes, that's right.

\* \* \* \* \*

Redirect Examination By Mr. Henderson

MR. McKENZIE

Q. And in discussing the insurance plan at that time, at the first meeting, when did he say it would go into effect?

A. He said it probably would be a year but he would try and get it sooner if it was possible in any way.

Q. He said it would probably be a year?

A. Yes. [129]

\* \* \* \* \*

Q. He mentioned the Union in connection with insurance at that first meeting?

A. He said that he was trying to get insurance and we were talking about the Union at the meeting, yes.

\* \* \* \* \*

Direct Examination By Mr. Henderson

DONALD E. McKINNEY

\* \* \* \* \*

Q. Mr. McKinney, you were employed by Kit Manufacturing Company according to my notes here from March the 9th until July 17th, 1959, is that right?

A. That's right.

Q. I want to direct your attention to the meeting held just shortly before the June 4th elections, did you go to such a meeting?

A. Yes, I did.

Q. How did you happen to go to it? [130]

A. Well, I was working in the mill and my lead man, Vern Dobson, came by about 2:50, I guess, in the afternoon of June the 3rd and said they wanted me in the office and I said, "What for?" and he said, "You just go up there and you'll find out," and I was one of the last ones to get in there, and I guess there was nine or ten in there in the room; as many as the room would hold and still sitdown and Mr. Skinner and Bill Brown was up there and Bill Brown later left, and we was there about an hour and a half, I should judge, and Mr. Skinner opened the meeting by saying he guessed we all knew what we were there for, and of course, I knew then.

Trial Examiner Bennett: Just what he said, please.

A. Well, that's just what he said and we all knew what we was there for, and he said the election was coming up and there had been talk about Unions, different Unions, and they promised us pay raises and told us about the California contract and various other inducements to join the unions and he said he could tell us here and now that no outside bargaining agents could

(Testimony of Donald E. McKinney.)

dictate to him or the Kit Manufacturing Company, and what the company would pay or do, and he also said he knew, him and the others, that Kit Manufacturing Company, and what the company would pay or do, and he also said he knew, him and the others, that Kit Manufacturing Company knew what the company could afford and what they could do, and that they wouldn't be dictated to and he said he at one time belonged to a Union but he had [131] to in order to have his job, but that he could assure us that it would be hard to get to get out and we wouldn't want a Union, but the Company had our welfare at heart and . . . that they had our welfare at heart and was trying to do what was best for each employee. He further mentioned that we was just at about the breaking even point now, and this of course was in June and the plant had been in operation that many months, and he was proud of the crew he had; they was doing an efficient job, and it looked like we were going to make more trailers and that meant higher wages, but he said even though he was proud of the crew and we were doing good, that he had started with a new crew in Caldwell last year and that he could start with another new crew. In other words, he said "If you vote Union, you can be dismissed from the company for voting Union." He made that clear several different times throughout the conversation, that if we did vote for the Unions was to vote it out, but if we voted for management we would stay in, and he said that there was talk of this insurance plan but the company couldn't afford to pay for the plan in less than a year; the price of the group plan, at a price that the company could afford, but he said that he would like us to vote non-

(Testimony of Donald E. McKinney.)

Unions, and said "But by all means vote in the election," which was the next day in the afternoon, and I'm trying to think of all the highlights he said. Oh, he said that as [132] production went up, the various departments would get their raises, and I was in the mill there and there was some question raised; one of the fellows at the meeting was from the cabinet shop, about some of the departments being lower paid than the mill, which was one of the high paid departments, and he said it was the amount of turnover in each department, or the longevity of that department; the overall average is what totalled the wages. And he said, all you have to do if you've been there 30 days, you had your wage increased and you was to come to him, which I never did. I asked my foreman and I had got one raise. I believe I got one raise and then later on I did get a raise after the second election and that didn't have nothing to do with this election. [133]

\* \* \* \* \*

Cross-Examination By Mr. Weston

MR. MCKINNEY [135]

\* \* \* \* \*

Q. Now, I believe you said, among your statements, that he said that if anybody voted for the Union, he would be fired? [136]

A. That's what he told us, yes.

Q. What meeting was this?

A. On June the 4th.

Q. Could you give us the exact date?

A. Pardon me, I believe that was June the 3rd.

Q. June the 3rd? Could you give us the exact words he used to state that? Are you sure that's what he said?

(Testimony of Donald E. McKinney.)

A. Well, one of his exact words was that the company the Kit Manufacturing Company, would not tolerate a Union and if necessary they would dismiss the entire crew if they went Union and start with a new crew.  
[137]

\* \* \* \* \*

Mr. Henderson: I propose the stipulation to Mr Weston that the representation petition was filed by the Steel workers on January 19, 1959, and that there were interventions by the Sawmill and Lumber Workers and the Sheet Metal Workers, and the exact dates of those interventions I don't know. The hearing was held February 13th, 1959, and because [138] of the filing of charges in this case, the actual election was held up for awhile, but an election was held on June 4th with those three Unions participating, and the two highest votes were for no Union and the Lumber and Sawmill Workers representative had a run-off election was held on June 24th at which the majority of the votes cast were for no Unions, and objections were filed at the election with the Regional Director with the exceptions in the report with the exceptions directed particularly to the report which are on file in Washington.

Trial Examiner Bennett: Is that agreeable, Mr. Weston?

Mr. Weston: Yes, it is.

Mr. Weller: Mr. Examiner, there is a correction there as to the stipulation. It wasn't the Lumber and Sawmill Workers Blue Mountain District Council of Brotherhood of Carpenters.

\* \* \* \* \*



(Testimony of Donald E. McKinney.)

Mr. Henderson: Let me make the correction here. It's not the Lumber and Sawmill Workers, it's the Blue Mountain District Council of the United Brotherhood of Carpenters and Joiners of America.

Trial Examiner Bennett: All right. The stipulation is corrected. [139]

Trial Examiner Bennett: On the record. The record may indicate that we have waited from 9:30 until the present moment which is a few minutes after 10:00 for Mr. Henderson's missing witness and apparently it doesn't appear that he's going to show up.

Mr. Henderson: I'm afraid that is true, Mr. Examiner, and I now move to dismiss the complaint as to George Norris. [140]

\* \* \* \* \*

Trial Examiner Bennett: All right. I'll grant the motion. [141]

\* \* \* \* \*

Direct Examination By Mr. Weston

RAY SKINNER

Q. Your name is Ray Skinner? A. Yes.

Q. And you live in Caldwell? A. Yes, I do.

Q. You are the superintendent or general manager of the Kit Manufacturing Company?

A. Yes, I am.

Q. How long has that company been in operation in Caldwell, Ray?

A. We started operation of the Kit Manufacturing Company in Caldwell in November 1958.

\* \* \* \* \*

(Testimony of Ray Skinner.)

Q. And about how many employees do you have out there?

A. Approximately 104 at the present time. [143]

\* \* \* \* \*

Q. Now, Mr. Skinner, there is some testimony in this case with reference to your having a conversation with a Mr. Jordon, with reference to a position as maintenance man in your plant. Do you recall that conversation or the testimony here in that case?

A. Yes, I do.

Q. You did have such a conversation with him?

A. Yes.

Q. Was he retained and hired as a maintenance man?

A. Yes, he was.

Q. Did he give you at that time any of his qualifications? [144]

A. Yes, he told me he was a qualified electrician and power saw operator.

Q. Did you offer him a wage scale for beginning work? A. Yes.

Q. Did you tell him that would be increased later on if he produced? A. Yes, I did.

Q. Now there is some testimony here with reference to a discussion about the Unions at the time Mr. Jordon was hired by you. Can you tell us what, if any, conversation you had pertaining to the Union at that time?

A. Well, Mr. Weston, I don't remember in general the conversaton, however, I might have expressed my views and concern with the Union for management. [145]

\* \* \* \* \*

(Testimony of Ray Skinner.)

Q. And there has been some testimony in this record with reference to a meeting in which you told the employees that this was not the time for the Unions. Do you recall telling them that?

A. Yes, I have told them that.

\* \* \* \* \*

Q. (By Mr. Weston): You heard the testimony here yesterday afternoon the witness Mr. McKenzie? [146]

A. Yes, I did.

Q. Did you hear the testimony also of Mr. McKinney?      A. Yes.

Q. Did you hear some testimony yesterday afternoon by one of those witnesses that you made some statements with reference to their voting?

A. Yes.

Q. What was that statement that you told them at that meeting?

A. The statement that I made in concern with their voting, you mean?

Q. Yes.

A. The only statements that I ever made at the meetings directed to any employees of that plant was that I urged all of them to vote but to vote for their choice of management or Union to represent them, but I felt at the time that management could do more for them than the Union organization could at that time.

Q. When you say, "You could do more for them than the Union could", when you made that statement, what did you mean by that?

A. I was referring that a plant such as this. . . I had certain amount of dollars and cents to put in this

(Testimony of Ray Skinner.)

plant to get it into production and that's all that I had to make this plant a paying proposition in order to keep the em[147]ployees employed at the rate of pay they're making, and it was at the extreme end that I could afford to pay at that time and I might have mentioned that under no Union organization could I afford to pay any more money and couldn't until the plant had a better foundation to stand on, and I asked the employees that I had to give management a chance to make that plant a profitable organization and give us a little more time before they got into something that might be of serious consequences.

Q. Now Mr. Skinner, there has been some testimony here with reference to a meeting held on the 24th of June, the day of the run-off elections. I particularly direct your attention to any statement that you made or anything that you did with reference to the insurance plan which was being adopted by the Company as of that date. Now I would like to ask you if you were in. . . . was it necessary to get the insurance cards signed as of that date?

A. Yes, it was absolutely necessary in order for us to get the insurance into effect as soon as possible. However, this insurance was not an overnight situation. We had been working on a group insurance plan since the beginning of the plant at Caldwell, and from Mr. Arnold Romain, who is secretary of the Kit Manufacturing Company in Long Beach, California, he forwarded the cards up with a teletype message that they be in his hands in Long Beach the following [148] Monday morning; that he had scheduled a hearing with the insurance board that was to underwrite this group

(Testimony of Ray Skinner.)

insurance policy and they had to have the number of employees and dependents on the cards before they could proceed with the underwriting of the group insurance.

\* \* \* \* \*

Trial Examiner Bennett: You got them the previous day?

A. I got them in the evening. They come in the evening mail after work.

Trial Examiner Bennett: You said that you were working on the insurance plan for some time?

A. Yes.

Trial Examiner Bennett: How long?

A. Since the plant was, well, since the plant was originated. . . . I mean, the plant here in Caldwell, from November up until the present date, we had been trying to get a group insurance plan for all the employees as we carry in our other plants. [149]

\* \* \* \* \*

Q. What was his qualifications as a maintenance man?

A. I believe Mr. Jordon was lacking in all phases of the qualifications to be qualified as a maintenance man.

Q. On your statement here involving his discharge or change of status, I believe you state, among other things, that he was insubordinate and wouldn't do what he was told.

A. On various occasions, yes.

Trial Examiner Bennett: What are you referring to now? Are you referring to a document not in evidence?

(Testimony of Ray Skinner.)

Mr. Weston: Yes. Would you give us any incidents of his refusing to do what he was told?

A. One of the most important ones, he was asked to come in on a Saturday, since we had some airliners to re-route in the plant, and this necessitated shutting down the air compressor which had to be done when the plant was not in [150] normal operation and he was called in and he started the job and left before it was completed and consequently resulted in the foreman having to call in other employees to get the job done so that we could go into operation on a Monday morning.

Trial Examiner Bennett: Do you mean that he only worked part of Saturday?           A. Yes.

Trial Examiner Bennett: How long?

A. I believe it was in the morning.

Trial Examiner Bennett: A matter of several hours?

A. I believe he worked a full four hours that morning.

Q. (By Mr. Weston): Did he leave without notice or did he get permission to leave?

A. He didn't get permission from me. [151]

\* \* \* \* \*

Q. (By Mr. Weston): Do you know whether he got permission?

A. He did not get permission from me or the foreman in charge of the job.

\* \* \* \* \*

Q. Now, do you have any other instances of his inability to work as a maintenance man?

A. Well, in general you observe those occasions [152] throughout and it's kinda' hard for me to de-

(Testimony of Ray Skinner.)

termine on one particular instance, but on one particular instance he was incapable of repairing tools, and he was incapable of doing electrical work just about . . . to my amazement . . . I know I was . . . he was hooking up a machine and he . . . through the circuit breaker on the line, and he was asked by the foreman what he was waiting for and he said, "Well, I shut the breaker off," and he was waiting for the electricity to drain out of the line.

\* \* \* \* \*

Q. Now when he asked you . . . he asked for an increase to \$1.80 an hour, did he?

A. I don't believe he stipulated the amount, I believe he asked for a raise but he might have been referring to \$1.80 an hour.

Q. Can you give us some idea in relation to that time when he was laid off?

A. I believe it was two weeks when he was laid off.

\* \* \* \* \*

Q. What did you tell him when he asked you for the increase in wages?

A. I don't remember what we told him at the present [153] time, but I believe I said, "We'll wait and see."

Q. Had you had any complaints from the foreman or others with reference to his work?

A. Yes, I had various complaints at all times.

Trial Examiner Bennett: Had he been promised a raise? Had he been told that he would get a raise?

A. If he qualified for the job, yes.

Trial Examiner Bennett: When was he told that?

A. When he was hired.

\* \* \* \* \*

(Testimony of Ray Skinner.)

Q. When did you first decide that he was to be discharged or laid off?

A. Immediately after he was hired, I would say within a week when I discovered that he was not qualified as a maintenance man.

\* \* \* \* \*

Q. (By Mr. Weston): Now can you tell us why he wasn't discharged before the time that he was actually discharged? [154] A. We don't like to . . . we like to give an employee ample opportunity to prove his ability to do the work that he's supposed to do and we don't take action; don't have action too hastily because there's operations there in the plant that need to be done and it takes some time for an employee to work through the various stages of the job, and I, for one, certainly like to give the employee the benefit of the doubt and not make decisions too hastily as to his ability to do the job.

Q. Did you give him an opportunity to work?

A. I feel that we gave him ample opportunity, yes.

Q. How soon after he was discharged was he replaced with a new employee?

A. I believe it was about two weeks after he didn't come back in, before I transferred a man off the production line to the position as a maintenance man.

Q. Now at the time he was laid off, had he been absent from work just prior to the time he was discharged? A. Yes, he had.

Q. How long had he been away from his job?

A. I believe that he had been absent . . . it was on the third day when he came into the office and talked to me about it, and that would make it three days, if I recall correctly.



(Testimony of Ray Skinner.)

Q. Did he ever have permission from you to take the [155] two days off that he took just prior to his discharge?  
A. No, he did not.

Q. Was he steady in his work?

A. No, he was not.

Trial Examiner Bennett: What do you mean when you say "He was not steady"?

A. This was not the first time that he had missed work. He had took half-days off and he had, for various . . . I don't remember just how much he did miss, at the present time, but that wasn't the first time that he had been absent from his job.

Q. (By Mr. Weston): Had he been absent before without leave or without permission?

A. He didn't have my permission to be absent, no.

Trial Examiner Bennett: Was he supposed to have your permission?

A. Not necessarily in all cases, no.

Q. (By Mr. Weston): What permission was he supposed to have to take leave?

A. From the plant foreman.

Q. Do you know whether or not he had the permission from the plant foreman to leave his post?

A. No, I don't know whether he did or not.

Q. Now, who was his foreman, his immediate supervisor, or did he work for all of the foremen? [156]

A maintenance man works primarily for all the foremen in the plant, and he has to do what they ask him to do in the course of his work. They operate the equipment and in their station when their equipment breaks down, they call for the maintenance man and then they direct him as to what has to be done. How-

(Testimony of Ray Skinner.)

ever, the plant foreman, which is directly under me in the plant, is Mr. Bill Brown, whom he should have had in connection about his work at all. He should have had them answered by Mr. Brown in case of my absence.

Trial Examiner Bennett: How many foremen were there in the plant at that time in all?

A. I have, at that time . . . there was five foremen, I believe, in the plant.

Trial Examiner Bennett: Including Mr. Brown?

A. Including Mr. Brown, yes. [157]

\* \* \* \* \*

Q. Now, I'm handing you what has been marked as Respondent's Exhibit No. 1 for identification, and I'll ask you if that's your signature.

A. Yes, it is.

\* \* \* \* \*

Q. Is this what I have referred to as a change of status form that you prepare at the time that the employee is either . . . has his status changed or is discharged?

A. Yes.

Q. Is this writing on here your writing?

A. Yes, it is.

Trial Examiner Bennett: Are you offering it now?

Mr. Weston: I don't know whether it needs to be in evidence at this time or not, but I'll offer it in evidence at this time.

Mr. Henderson: No objections.

Trial Examiner Bennett: I would like to know when you prepared that. Was it on the date it bears or otherwise?

(Testimony of Ray Skinner.)

A. Yes, that would be on the date, I believe. [158]

Trial Examiner Bennett: It bears the date of April the 13th. Is that the date you prepared it?

A. Yes.

Trial Examiner Bennett: I'll receive it in evidence.

\* \* \* \* \*

Q. (By Mr. Weston): Now Mr. Skinner, I am handing you what has been marked for purposes of identification as Respondent's Exhibit No. 2, is that your signature? A. Yes. [159]

Q. Is that your handwriting? A. Yes.

Q. Was that prepared on the date it bears up there?

A. Yes, it was.

Q. Now referring back again to Exhibit No. 1, you state here that this employee has been terminated for a violation of a rule of the company. Tell us what you mean by that? What rules did you have in mind? Did you have any particular rule in mind?

A. We have rules which normally that all employees fall under once they are terminated. Such as lack of interest in the work, unqualified to perform the duties, being absent from work on consecutive dates, and being late for work, and I believe that was in this case as being absent three days without notice given and unqualified to perform his duties. [160]

\* \* \* \* \*

Q. (By Mr. Weston): Now in our Exhibit No. 2 . . . I'll offer this in evidence.

Mr. Henderson: No objections.

Trial Examiner Bennett: This purports to be a correction notice, is that correct? A. Yes, it is.

(Testimony of Ray Skinner.)

Trial Examiner Bennett: And in it you make reference to the employee refusing to sign it, is that a fact?

A. Yes.

Trial Examiner Bennett: Who asked him to sign it?

A. I did.

Trial Examiner Bennett: On which date?

A. On the date it was made out.

Trial Examiner Bennett: On the date it was made out, the date that it carries on the top?      A. Yes.

Trial Examiner Bennett: All right. I'll receive it in evidence.

Q. (By Mr. Weston): Now in this Exhibit No. 2, you state that this employee was smoking and loitering in the restroom which was near the time clock, and in order to punch his time card fast, and that he has been properly [161] warned of this before and the employee refuses to sign the correction notice with reference to the first statement. How often did this happen?

A. Well, I can't recall how often it happened but it did happen before. We normally give them a chance and we don't write up a correction notice unless it's a repeated violation and I had noticed on several occasions just what dates and how many different occasions it was, but I don't recall, but it certainly wasn't the first one.

Trial Examiner Bennett: You said that he had been warned of this before?      A. Yes.

Trial Examiner Bennett: By whom?

A. Me. for one.

Trial Examiner Bennett: How many times did you warn him on previous occasions?

A. I think I only told him about it the one time

(Testimony of Ray Skinner.)

but I had complaints from the foremen that it was repeatedly happening in the afternoon before quitting time.

Trial Examiner Bennett: This particular day, was it March? Was the second time involving you?

A. Yes, the second time involving me.

Q. (By Mr. Weston): What did he say when you asked him to sign that correction notice?

A. He said he didn't want to sign it. [162]

Q. Did he give you any reason?

A. I don't believe so. [163]

\* \* \* \* \*

Cross-Examination by Mr. Henderson

MR. SKINNER.

\* \* \* \* \*

Q. And that was during the conversation you had with him at the time of the Union meeting in the Saratoga Hotel? [174]

A. Yes, it was in the lounge of the Saratoga Hotel.

Q. And that was the evening of the Union meeting, was it? A. I believe it was, yes. [175]

\* \* \* \* \*

Q. (By Mr. Henderson): Now about Mr. Jordon, you have testified that you made up your mind to fire him about a week after you stood him on the payroll, is that right?

A. I believe that's right, a week or two weeks or something like that when I first noticed that he was unqualified for his job.

Q. But you didn't fire him for a couple of months

(Testimony of Ray Skinner.)

after that or for six weeks or so, is that right?

A. That's true.

Q. How many hours a week was he supposed to be working?

A. Normally a work week is forty hours and we consider it his duty, the duty of a maintenance man, to work off hours since that is the only time that he has to ready the plant when something is broken down in order to get it [191] ready to go through the production work week.

Trial Examiner Bennett: You mean work more than 40 hours?      A. More than 40 hours, yes.

Trial Examiner Bennett: Was he to be paid for that?

A. Yes.

Q. (By Mr. Henderson): Is there any set any number of hours that he was supposed to work?

A. A minimum number of 40 hours a week, yes.

Q. A minimum of 40 hours a week?

A. Yes.

Q. But you don't instruct them to work any set number of hours like 44 to 48 or 52 hours a week?

\* \* \* \* \*

Q. Well, now, in Respondent's Exhibit No. 1, the change of status form for Elsworth Jordon, down here a few lines down you have these notations, if I'm reading the writing correctly, "First week, 41 hours; second week, 36.5 hours; third week, 33.6 hours, and the fourth week, 42 hours, should have been 48 hours." Well now, what does that "Should have been 48 hours" mean?

A. That is the date that he took off at lunch and didn't do the job that he come in to do. We asked him to come in and work and help us ready the air line

(Testimony of Ray Skinner.)

in the plant we could go into production with it the following Monday [192] morning, and that's the particular work week that I'm referring to. [193]

\* \* \* \* \*

Q. Now when did you decide to replace Jordon? When did you make a definite decision on that?

A. Mr. Jordon had been out of the plant his third consecutive day and I had transferred . . . temporarily transferred one of the production electricians over to the job as maintenance man during his absence and I, until the afternoon of the third day that Mr. Jordon had been out, I had had no word from him and he come in with the newspaper clipping in his hand and says, "Does this mean I'm terminated?" and I told him at the time that I had not written any termination notice on him but I was looking for another maintenance man and he said, "Well, that means I'm fired," and I said, "Well, if that's the way you want to put it, that's [194] the way it is. Mr. Jordon stipulated that that was the only way he could take it and I said, "Well, that's up to you, and I told you I have not written a termination notice on you as yet," and I believe the following day he come back and wanted his termination notice and I said, "I haven't written it as yet, Jordon. It's not a company policy to give a termination notice to employees anyway."

Trial Examiner Bennett: Had you decided to terminate him?

A. I hadn't when he came in with the clippings that day. I hadn't made up my mind, but he indicated before that he was qualified at that mill to run a power saw and it could have been in the case of a transfer or

(Testimony of Ray Skinner.)

termination. It would have been up to him to make the choice.

Trial Examiner Bennett: Do you mean termination as a maintenance man or transfer to a power saw job?

A. Yes.

Q. (By Mr. Henderson): You never mentioned a power saw deal to him in your whole conversation, did you?

A. Yes, I told him that I didn't, at the present time, have an opening when he asked to go to work in the plant.

Q. That isn't the conversation I'm talking about. I'm talking about the time which he testified was April 2nd, when he came in with a clipping in his hand and asked if he was terminated. Now in that conversation did you mention the [195] possibility of the power saw?

A. No, I did not.

Q. You didn't mention that, the possibility that he would be transferred to a power saw job?

A. No.

Q. Well, why not?

A. Well, I could see no particular reason to since he was not on the job and it appeared to me that he was in perfectly good physical condition to work when he brought the newspaper clipping in and yet he was offering an excuse for not being at the plant on the job.

Trial Examiner Bennett: Is it fair to say when you did place the newspaper advertisement that you had decided as of that time that he was through as a maintenance man?

A. May I point out that I didn't place the newspaper advertisement.



(Testimony of Ray Skinner.)

Trial Examiner Bennett: Who did?

A. The Employment Security Agency here in town. I called them and asked if they had any applications on maintenance men down there or someone that might qualify as a maintenance man and all they tell me is that they'll see what they can do. We do most of our hiring through them.

Trial Examiner Bennett: Is it fair to say then that when you contacted the Employment Agency at that time that you decided to . . . had you needed a replacement as a maintenance [196] man?

A. Yes.

Q. When did you contact them?

A. I- don't remember.

Q. With relation to the day the ad appeared in the paper I mean.

A. Oh, it was probably the day following or something like that.

Trial Examiner Bennett: Had the ad appeared the day following when you called them?

A. I imagine it was. I have no way of knowing. I didn't see it. I didn't read the clipping and see the date of the paper that it come from. In fact, I never knew there was one in the paper until Mr. Jordon brought it in and showed it to me in the plant.

Q. (By Mr. Henderson): Well now, Mr. Skinner, referring again to this statement which you signed, did you not say on page 6, "After he had been absent for three days with no further word from him, I ran an ad through the E.S.A. for a maintenance man." Didn't you say that in this statement?

A. No, I did not run an ad.

(Testimony of Ray Skinner.)

Q. That isn't the question I asked you. I asked if you didn't make that statement here in this piece of paper which you signed.

Trial Examiner Bennett: Let me suggest, Mr. Skinner, [197] that you listen carefully to the questions that he's asking you. Read it to him again.

Q. (By Mr. Henderson): Yes. Now "After he had been absent for three days with no further word from him, I ran an ad through E.S.A. for a maintenance man." Didn't you say that?

A. If it's in the statement, I probably did.

Q. Now you wish to correct that statement?

A. Yes, because I had nothing to do with running the ad in the paper at all, I was only calling for a replacement and that I did do.

Q. You were calling for a replacement?

A. Yes.

Q. You called for a replacement the day before the ad run?

A. I don't remember whether it was the day before or not.

Q. I see.

A. It could have been two or three days before but I don't remember.

Q. Yes. Well, now, referring to General Counsel's Exhibit No. 2 which is the newspaper ad, that states definitely, does it not, that it's taken from the paper of Thursday, April the 2nd. Is that right?

A. Um hum. [198]

Q. So that you certainly called up the E.S.A., which I take is the Employment Security Agency here in Caldwell?

A. Right.

(Testimony of Ray Skinner.)

Q. And you certainly called them up as early as April the 1st then, did you not?

A. The date I called I do not remember, but I did call them. [199]

\* \* \* \* \*

Q. Did Mr. Jordon, to your knowledge, call his supervisor on the first day that he was off with a bad foot?

A. Yes, I believe that his supervisor did tell me that he had called and said his feet were bothering him.

\* \* \* \* \*

Q. But his supervisor and you had been notified that he would be off work that day, is that right?

A. Yes, I believe that's correct. [200]

\* \* \* \* \*

Q. Isn't it true that Mr. Jordon had not been off work three days without notice to his supervisor before you contacted the E.S.A. to replace him?

A. Yes, I think that's true. I don't think he had missed three days in any consecutive period. [201]

\* \* \* \* \*

Q. (By Mr. Henderson): Well as a matter of fact, it was on the very day that he called up that you contacted the E.S.A., wasn't it?

A. I don't believe so. I believe that the first contact that I had with the replacement service, the E.S.A., was when we were refiring the airlines in the plant and he refused to carry out the job even though he started it and he didn't stay there to finish the job and consequently we had to call in more help to get it done, and that's the first one . . . the first time, I believe, that I contacted the E.S.A. for a maintenance man.

(Testimony of Ray Skinner.)

Q. Oh I see, and it was then you decided that you would replace him at that time?

A. I believe it was Monday morning. That occurred [203] on Saturday, I believe it was, and I believe that was the following Monday morning. [204]

\* \* \* \* \*

Trial Examiner Bennett: Your records indicate the last day that he actually worked for the company there?

A. Yes, it would show on these cards.

Trial Examiner Bennett: Would you find that out for me, please?

(Mr. Weston hands witness correct card.)

A. Yes, it would have been on Tuesday of the week of April the 4th, no the 5th.

Trial Examiner Bennett: It would be Tuesday, March the 31st, is that correct?

A. Yes, I believe that's right.

Trial Examiner Bennett: April the 5th is a Sunday. You mean the Tuesday before that then?

A. Our week ends on a Sunday, and that's the pay period ending, which would be the Tuesday preceding that.

Trial Examiner Bennett: Preceding April the 5th?

A. Yes.

Trial Examiner Bennett: That would be March the 31st then?      A. Yes. [205]

\* \* \* \* \*

Q. (My Henderson): No, let me drop that. Why did you fire Jordon? What were the reasons for your firing Jordon?

A. I would like to make this stipulation, if I may.

(Testimony of Ray Skinner.)

I don't refer to firing anyone. I think that the basis that led to Mr. Jordon's termination from the company was, in fact, that it was self-inflicted on himself by, let us say, putting words in my mouth, bringing the newspaper clipping in and saying as far as he went or knew, that meant that he was fired and his disqualification . . . his lack of qualifications for the job that he was doing and also for his absenteeism in the plant.

Q. Now as to whether or not you fire him, didn't you say in this statement, "Elsworth Jordon was terminated by me on or about 4-2-59," did you not make that statement here? A. Yes, I did. [209]

\* \* \* \* \*

Q. And when he asked for an explanation of the newspaper clipping, what did you reply?

A. I told him, I believe I told him, that I was looking for another maintenance man. [210]

\* \* \* \* \*

A. No, I did not.

\* \* \* \* \*

A. No, I was not making a medical judgment of his foot. I called the company doctor and asked for the results of the examination and he said he hadn't been there.

Q. (By Mr. Henderson): Is it a rule of the company that a man cannot have his own doctor?

A. No, it is not, but he must have a doctor's release when he goes to one. [211]

\* \* \* \* \*

Q. Then you didn't terminate Jordon because he was loitering and smoking in the rest room, did you?

A. No, I didn't.

(Testimony of Ray Skinner.)

Q. Had you ever warned him that he was in danger of being discharged because he wasn't qualified for the job? A. I don't believe that I had.

Q. You never warned him that he might be terminated at all, had you? A. No, I did not.

Q. And you never told him that he wasn't qualified, had you?

A. I think that I mentioned it once to him that he was going to have to learn his job better. [212]

\* \* \* \* \*

Q. And incidentally, you recall having a conversation with Mr. Jordon the day, the first day he came to work after your meeting with him that night at the Union meeting? [212]

A. The first day that he came to work?

Q. Yes. A. No, I don't.

Q. You don't recall whether you had a meeting with him or not; had a conversation with him?

A. No, I do not.

Q. And then your answer is no?

A. I don't recall having a meeting with him, that's right.

\* \* \* \* \*

Q. (By Mr. Henderson): Mr. Skinner, on how many occasions were you in the bar of the Stringbusters Lounge when a Union meeting was held?

A. I only remember . . . I didn't know at the time that they were having a Union meeting. These are held in a separate room. I know of one occasion that they had had a Union meeting and I was at the bar.

Q. When was that?

A. I don't remember the date.

(Testimony of Ray Skinner.)

Q. Was it in February? [213]

A. February or March or something like that, I would say somewhere in there.

Q. And you were a member . . . I wanted to call your attention specifically to March 17th, and do you recall being in the bar and having a drink with Don Jessen that night?

A. I don't recall that, no.

Q. Do you recall whether or not Elsworth Jordon came up and joined you after you had had a conversation with Jessen for awhile?

A. I don't remember that either.

Q. You wouldn't deny it though?

A. I beg your pardon?

Q. You wouldn't deny it though?

A. If I remembered it, no.

Q. I don't think I make myself clear.

Trial Examiner Bennett: He's asking if you deny it.

Q. (Mr. Henderson): I don't think I made myself clear. Do you actually deny it?

A. No, I don't actually deny it.

Q. You did hold meetings of your employees, didn't you, during February and March in which you discussed Union organization?

A. Yes, I did.

Q. And you called them up to your office, didn't you? [214]

A. Yes, I did.

Q. And presented management's viewpoint?

A. Yes, I did, right.

Q. And you called the employees into your office shortly before the election on June the 4th and explained what you felt about Unions then, didn't you?

A. Yes, I did.

(Testimony of Ray Skinner.)

Q. And during June the 4th, the day of the run-off election, you called the employees into your office didn't you?

A. Yes, I called the employees into my office.

Q. And you discussed insurance, you say?

A. Yes, I did.

Q. And you presented your views on Unions then, didn't you?

A. I don't believe I got into the Union problem at that time.

Q. Did you present your views on Unions at that time?

A. No, as I had written a letter and given one to each of the employees, there was no reason for it. It was primarily on insurance; however, I'm not denying that I might have mentioned Unions to them, but it was a very brief conversation, if it was touched upon at all at that time.

Q. You don't deny that you touched on the Union conversation though? [215]

A. No, I don't deny it.

\* \* \* \* \*

Q. And you mentioned the possibility of the plant closing down if the Union came in?

A. I probably did.

Q. And you mentioned also the possibility of women being replaced by men if the Union came in, didn't you?

A. I might have done that, yes.

\* \* \* \* \*

Q. What did you tell them prior to June 24th about the time the company would put in an insurance plan?



(Testimony of Ray Skinner.)

A. I told them it could be possible that this plant would have to operate for one year before we could get an underwriting company to take insurance on it, on the basis that we wanted to get the same program as we had in our parent [216] factory at Long Beach, California; however, they were told that we had not . . . that we would be continuing to work on the program and they would be notified as soon as we put it into effect.

Q. They were notified on the very day of the Union election, weren't they?

A. They certainly were. [217]

\* \* \* \* \*

-Redirect Examination by Mr. Weston

MR. RAY SKINNER

Q. Now Mr. Skinner, I believe you just testified a few moments ago that in your meeting with the employees in June, that you did mention the Union matter and that the plant might be closed down if the Union came in. What did you mean by that statement?

A. I meant that I had only a certain amount of money to operate on and if I had to pay higher wages I wouldn't be [218] able to do it because I didn't have the money to do it with since the plant was set out on a minimum amount of dollars and I was just at the point where all new employees were being trained on the job and manufacturing expenses were too high, that I couldn't afford to pay any more at that time. [219]

\* \* \* \* \*

Q. Now I would like to call your attention to Rule No. 7, which provides that "An employee is violating the company rules by being tardy or absent habitually;

(Testimony of Ray Skinner.)

without reasonable cause," and habitually means three times within 30 days without cause. Is that what you referred to when you referred to the fact that the man was off three days? A. Yes.

Q. Plus the fact that he was off two days when he brought the clipping in? A. Right. [220]

\* \* \* \* \*

Mr. Henderson: I would like to accept that suggestion, if I may. Mr. Skinner, wherein does Elsworth Jordon violate Rule 7? You have it there, don't you?

A. Yes. As far as I'm concerned his entire work at the plant and his continued absence. To me, he had no reasonable cause to be absent. He stated he went to see a doctor and yet he had never brought a doctor's report even though he was asked to do so. [232]

\* \* \* \* \*

Q. Now this Saturday, March the 21st, when Mr. Jordon worked three hours and apparently went home, did you talk to him that day? A. No, I did not.

Q. Did you ask him to work any more?

A. No, I didn't ask him to work.

Q. Well, who did?

A. I don't know who did. Maybe Mr. Brown who was in charge of the project which he was on did. I don't know, I wasn't there.

Q. You don't know then?

A. No, I don't know who did. He must have been asked to work or he wouldn't have come in.

Trial Examiner Bennett: Is it your testimony that he went home without finishing what he was supposed to do that [236] day?

A. That's correct.

\* \* \* \* \*

Direct Examination by Mr. Weston

MR. BILL BROWN

\* \* \* \* \*

Q. Now going back again to Mr. Jordon, there has been some testimony here with reference to his being asked to assist in putting in airlines on Saturday morning. Were you there that morning?           A. I was.

Q. Can you tell us what happened with reference to his leaving his employment on that morning?

A. No, I can't tell you that.

Q. Did he give any reason to you for leaving?

A. Not that I remember.

Q. Did you ask him to stay and finish the job?  
[241]

A. I didn't say no more to him after we got started. I went to lunch.

Q. Did he leave while you were at lunch?

A. Yes.

Q. Who was in charge that morning?

A. I was.

Q. When you came back, he was gone?

A. Yes, it was at lunch or shortly after lunch, I didn't get back right after lunch time as I had some business to take care of.

Q. The job was not finished then?

A. No, I finished it myself.

Trial Examiner Bennett: Did Jordon ever say anything about his leaving or why he left?

A. No.

\* \* \* \* \*

Cross-Examination by Mr. Henderson

MR. BROWN

Q. Did you ever say anything to Jordon about it?

A. No, I didn't. [242]

\* \* \* \* \*

Direct Examination By Mr. Henderson

JAMES ALLEN TABOR

\* \* \* \* \*

Q. Did you used to work for Kit Manufacturing Company?      A. I sure did.

Q. Were you working there on March 21st, a Saturday?      A. Yes.

Q. How did you happen to be working on Saturday?

A. Bill Brown asked me to come in on Saturday and help put the airlines in. [254]

Q. Who was working with you on the airlines?

A. Elsworth Jordon.

\* \* \* \* \*

Q. (By Mr. Henderson): I see, and did you finish the job?      A. Yes.

Q. And do you recall what time you finished it? [255]

A. I would say an hour before dinner, about 11 o'clock.

Q. And what . . . did you and Jordon talk to anyone after you finished the job?

A. Well, Bill, I asked him, I said, "Do you want me to take off?" and he said, "No. Go ahead and build some tables over in your department and finish up."

Q. Did Jordon talk to Brown?      A. Yes.

(Testimony of James Allen Tabor.)

Q. What did Brown tell Jordon?

A. He said he'd ask him, as best as I can recall, he asked him to take off. He said yes that he was through that he could take off.

Q. Who asked who if he could take off?

A. Jordon asked Leo.

Q. Well, what did Bill reply?

A. He said, "Yes, you can take off."

Q. How late did you work that day?

A. I worked until noon that day.

Q. And Jordon took off when he was finished with that job?

A. Yes, he did.[256]

\* \* \* \* \*

Trial Examiner Bennett: When you left at noon Brown was not there though?

A. No sir.

\* \* \* \* \*

Q. (By Mr. Henderson): Did he see the job when you and Jordon finished with it?

A. Yes. [257]

Q. I see, and did he say whether he thought it was finished or not?

A. Yes.

Q. What did he say?

A. I can't recall exactly what he said, but Jordon asked him to take off, as I said awhile ago, and he said, "Well, it's finished and I believe it's done and you can go."

Q. Do you know whether or not anybody else worked on that job after you and Jordon left?

A. I don't believe so because we didn't have enough air hoses there. We had short air hoses and of course there was nothing we could do. We had it all done, as much as we could do. [258]

(Testimony of James Allen Tabor.)

A. Yes.

Q. So that as of that time there were no more air hoses there to finish the job then?

A. There wasn't no more air hoses there for several weeks later. I worked there.

Q. Did you need more air hoses to finish that job?

A. Huh?

Q. Did you need more air hoses to finish the job?  
[260]

\* \* \* \* \*

Rebuttal by Mr. Henderson

MR. JORDON

\* \* \* \* \*

Q. I want to direct your attention to Saturday, March 21st. Did you work that day?      A. Yes, I did.

\* \* \* \* \*

Q. Who was working with you?

A. James and Jim and myself. Bill worked on the pipelines that morning.

Trial Examiner Bennett: Who do you mean by James?

A. James Taber.

\* \* \* \* \*

Q. And how long did you work on it?

A. Oh, I would say, I think we finished up about 10:30 or something like that. [274]

\* \* \* \* \*

Q. Did you talk to Bill Brown before you went home?

A. Yes, I did, I asked Bill if I could go home and he said yes, but that's all I said.

(Testimony of James Allen Tabor.)

Q. Did Bill Brown ask you to do anything about the [275] tables?

A. No, he did not. That was a maintenance job.

Q. Incidentally, at that time did you have a telephone?

A. I did.

Q. Do you know if Bill Brown knew your telephone number?

A. Yes, they had it on my application.

Q. How far from the plant did you live?

A. Approximately five blocks.

\* \* \* \* \*

Re-Cross-Examination by Mr. Weston

MR. JORDON

Q. Were you willing to work that day?

A. I was but I was a little sick.

\* \* \* \* \*

Q. Did you tell Mr. Brown you were sick that day?

A. No, I told him that I would put the airline up and after I got through I was going home and he said "All right, but we have to have that up for Monday morning."

\* \* \* \* \*

Q. You did tell Brown that you were not feeling well? A. I did.

Q. And you asked if you could go home for that reason?

A. He said, "O.K. The job is finished and you can go home." [276]

\* \* \* \* \*

Trial Examiner Bennett: You said you finished every-

(Testimony of Elsworth Franklin Jordon.)

thing you had to do that morning when you asked for permission to leave? A. Yes, I had. [280]

\* \* \* \* \*

Q. So you casually walked up to the foreman and said, "I don't feel good, I've finished my job. Is it o.k. for me to go home?" and he said, "Yes."

A. I walked up to the foreman and I said, "Bill, I don't feel good, that I finished my job and I wanted to go home," and he said, "Yes Jordon, we don't have nothing else for you to do." That these guys was going to finish building the tables and then they were going to go home. As a matter [282] of fact, that morning they said they were not going to work but a half a day.

\* \* \* \* \*

A. Yes. I asked Mr. Brown where the maintenance man was, and the men that were working on the airlines, and he said, "I don't know. They haven't come back from lunch yet."

Q. Was the job completed?

A. No, it wasn't.

Q. Were you disturbed about it?

A. Yes, I was. I called Mr. Brown in my office and I told him that when I brought a crew in and paid them time and a half on a weekend, that I expected to get the job done and that was when it was so important that I had to pay for time and a half work; that it was important that that job be finished [285] so that the plant would have to have the airlines in working order on Monday morning's production.

Q. Was there still some work to be done on the job by the maintenance man?

A. Yes, quite a lot of work to be done.



(Testimony of Elsworth Franklin Jordon.)

Q. Would you explain what that was, please?

A. Yes. When the line was taken . . . I believe the previous testimony has been given that the line was on the floor which is correct, and it was to be removed from the floor and installed overhead in the plant.

\* \* \* \* \*

Q. (By Mr. Weston): These fittings on the line and the extensions of the overhead line, whose job would that be? [286]

A. That would be the maintenance man's job.

Q. That was not completed when you came out there Saturday morning then?      A. No, it was not.

Q. Now with reference to the building of the tables, whose job was that?

A. That is the maintenance man's job along with other help. We don't expect the maintenance man to do all the construction himself; he couldn't do it, couldn't do all of it himself but it's definitely his responsibility to help build them.

Q. So that when you went out there on that Saturday afternoon you found the job was not completed?

A. That is correct.

Q. And there was still considerable more work for Jordon to do then?      A. Yes. [287]

\* \* \* \* \*

Recross-Examination by Mr. Henderson

MR. SKINNER

Q. Mr. Skinner, what did you say to Mr. Jordon the next Monday when you saw him about this job, if anything?

A. I don't recall talking to him at all about it.

(Testimony of Ray Skinner.)

Q. You didn't say anything to him at all, did you?

A. I don't believe so. I don't just remember discussing that directly with the employee.

Q. I see, and did you instruct Mr. Brown to say anything to Mr. Jordon about that?

A. I don't know whether I told Mr. Brown to say anything to him or not, but I asked Mr. Brown that afternoon why Jordon went home when the job was not finished.

Q. But you didn't instruct Mr. Brown to say anything to Mr. Jordon?

A. I don't recall making any statement to that effect, no.

Q. I see, and so far as you know, nobody ever talked to Jordon about it?      A. It could well be.  
[288]

\* \* \* \* \*

Q. (By Mr. Henderson): What time did you talk to Mr. Brown about this?

A. Immediately after lunch on that Saturday.

Q. What time was that?

A. Probably between, oh, around 12:30. [290]

\* \* \* \* \*

Q. My question was what did Brown do, I didn't say what did he tell you?

A. Mr. Brown started breaking out the airlines and putting in the correct fittings and hooking it back up.

Q. How long did that take?

A. Most all the afternoon.

\* \* \* \* \*

Redirect Examination by Mr. Weston

MR. BROWN [291]

\* \* \* \* \*

Q. And Mr. Brown, there has been some testimony since you were here, by Mr. Jordon and Mr. Taber, to the effect that . . . I believe the testimony of Mr. Taber was that on the Saturday morning no connections were available, where you were putting the airlines overhead. Mr. Jordon came to you along about 10:30 or 11:00 and said that he wasn't feeling well and that his job was finished and he would like to go home. Did he do that or didn't he? A. He did not.

\* \* \* \* \*

Q. So that when Mr. Jordon . . . did Mr. Jordon leave without your consent? A. Yes, he did.

Q. Now there has been some testimony here by Mr. Jordon, particularly that his job was completed on that Saturday. Was that or was that not a fact?

A. That is incorrect. The job was not completed

Q. And there has also been some evidence here by Mr. [292] Jordon that he had nothing to do with building the tables. Is that correct?

A. Building what tables?

Q. Weren't you building some tables?

A. You mean for the sheet metal shop?

A. Yes.

A. Yes, we were building tables for that.

Q. Would that be part of his work then?

A. Any type of plant maintenance is plant maintenance man's work.

\* \* \* \* \*

(Testimony of Bill Brown.)

Q. Now when you came back after lunch, did Mr. Skinner talk to you about this job?

A. Yes, he did.

Q. What did he have to say to you?

A. He asked me if I was done and where was Mr. Jordon.

Q. What did you tell Mr. Skinner?

A. I don't remember what I told Mr. Skinner.

Q. Did you and Mr. Skinner then finished the job?  
[293]

A. Yes, completed it.

Q. How long did it take you about?

A. I really don't remember. It was the better part of the afternoon.

\* \* \* \* \*

Recross-Examination by Mr. Henderson

MR. BROWN

Q. Well, Taber was working with Jordon on that job, wasn't he?      A. He was. That's right. [294]

\* \* \* \* \*

Q. And you didn't say anything about the tables, did you?      A. No, I didn't.

\* \* \* \* \*

Trial Examiner Bennett: Do you know what Taber was sup- [295] posed to do there that day?

A. Taber was helping with airlines and building tables.

\* \* \* \* \*

Q. What did he start doing that morning?

A. Started on the airlines.

(Testimony of Bill Brown.)

Trial Examiner Bennett: Did you discuss this with Jordon or Taber before the following Monday or thereafter?

A. I don't recall whether I did or not. [296]

\* \* \* \* \*

Mr. Weston: Just one more question. Was it Mr. Jordon's job to make those up for you?

A. Yes, it was.

Mr. Weston: Did you have to make them up Saturday afternoon?

A. We made up some but we didn't make them all up. [300]

\* \* \* \* \*

[Endorsed]: Filed September 26, 1960.

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GENERAL COUNSEL'S EXHIBIT 2

Caldwell, Idaho, Thursday, April 2, 1959

13.—Male or Female

Help Wanted

Placement

Service

Sheet Metal Workers

Immediate local openings available for men 20 to 40 years of age with previous sheet metal experience. Aircraft sheet metal assembly preferred. Starting wage \$1.30 per hour.

Maintenance Man

Will do installation, hook-up, maintenance, and repair of various electrical tools. Must have previous electrical maintenance experience. Permanent job. Starting salary \$1.50 per hour.

Employment Security Agency

815 Cleveland

Caldwell

17.—Situations Wanted

---



Plant Rules  
and  
Regulations

***KIT*** MANUFACTURING CO., INC.

Airport Ave. and Warehouse Rd.  
Caldwell, Idaho

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There's no getting away from them . . .

RULES — that's what we're talking about! From the cradle on up, there are always rules. And, between us, we're lucky to have them. Call them rules, or laws, or whatever you like, they keep us from getting our fingers burned. They protect us. They show us the safest, most considerate, and best way to act at all times and places.

As members of society, we all have a hand in creating rules and making them stick. We, as individuals, protect our own rights by respecting those of others. At Kit, as elsewhere, the purpose of rules is to offer a pattern or guide. It is a lot easier to get along if we know what NOT to do.

To make sure that you and every employee gets a fair deal, we have the same rules for everyone. We don't want to take away your liberty or tie your hands in any way. We just want you to remember that in an organization as big as ours, we've got to act together for the good of every-



one. Some rules apply to safety; others apply to how you do your job, to conservation, to plain good sportsmanship. We want Kit always to be a safe place to work — a place where you'll have the most pleasant working conditions.

That's why we've given you this booklet of rules and regulations. In a short time, you can read them all and know the score. We bet you'll find that these rules make sense — good common sense.

There are penalties for all listed violations, naturally. They vary according to how serious the rule violation is and how many violations there have been. Penalties range from a Warning Notice to Discharge. Discharge results in cases of serious violations or in other instances where an employee fails to correct his action after previous warnings. Supervision enforces the rules.

As an important part of your work at Kit, we expect you to read the rules carefully and to be guided by them. It pays to stay within the rules. By doing this, you make your work and that of your fellow employees safer, easier, and more pleasant. We ask you to avoid the Rule Violations that follow. That's because we're pulling for you to make good at Kit.



## PLANT RULES AND VIOLATIONS

1. Starting time is 7:30 A.M. Quitting time is 4:15 P.M. Lunch hour is from 11:30 A.M. to 12:15 P.M. Each employee is expected to be ready for work when the starting whistle blows and is expected to be at work station when quitting whistle blows.

2. Conformance to all factory notices and signs is a must.

3. Misuse of company time; such as, washing up, loitering near exits, or lining up at doors prior to quitting time or before lunch periods, make you an undesirable employee; so does the reading of papers in toilet rooms, or elsewhere, during working hours.

4. Tools are part of your job. As a competent workman, you are expected to supply yourself with necessary hand tools. Special tools are supplied by the Company. Proper handling and care of all tools and equipment are measures of your competence as an employee.

5. Falsifying Personnel records or Company records.

6. Knowingly punching the time card of another employee, having one's time card punched by another employee, or unauthorized altering of a time card.

7. Being tardy or absent habitually without reasonable cause. (Habitual—3 times in a 30-day period.)

8. Habitually failing to punch time card (3 times in any 30-day period—habitual.)



9. Possessing weapons, explosives or cameras on Company premises without written authorization.



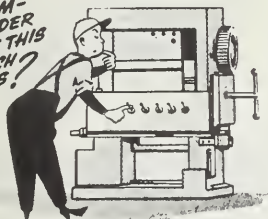
10. Insubordination.

## PLANT RULES AND VIOLATIONS

11. Being absent for a period of 3 consecutive working days without notifying your Supervisor.

12. Creating, or contributing to, unsanitary or poor housekeeping conditions.

HMM-  
WONDER  
WHAT THIS  
SWITCH  
DOES?



13. Operating, using or possessing machines, tools or equipment to which the employee has not been specifically assigned.



14. Engaging in horseplay, scuffling, throwing things, or causing confusion by shouting or demonstrations.

15. Making scrap due to carelessness.

16. Wasting time, loitering, or leaving place of work during working hours without permission.

17. Smoking except in specifically designated areas and during specified times.



18. Threatening, intimidating, coercing or interfering with fellow employees on the premises.

19. Vending, soliciting, or collecting contributions for any purpose whatsoever on Company time on the premises, unless authorized by Management.



## PLANT RULES AND VIOLATIONS

**20.** Distributing written or printed matter of any description on Company premises unless approved by Management.



**21.** Posting or removal of any matter on bulletin boards or Company property at any time unless specifically authorized by Management.

**22.** Removing from the premises without proper authorization, any Company property or that of another employee.



**23.** Gambling, or engaging in a lottery on Company premises.



**24.** Willfully or negligently misusing, destroying, or damaging any Company property or property of any employee.

**25.** Deliberately restricting output.

**26.** Making of false, vicious, profane, or malicious statements concerning any employee, the Company or its product.

**27.** Fighting during working hours or on Company premises.



## PLANT RULES AND VIOLATIONS

28. Drinking or possessing any alcoholic beverage on Company premises or on Company time.



29. Reporting for work while under the influence of alcohol or drugs.

30. Engaging in sabotage or espionage.

31. Violating a safety rule or safety practice.

32. Assignment of wages (with exception of Union dues check-off) or garnishments.

33. Immoral conduct or indecency.

34. Taking more than specified time for meals or for rest periods.

35. Productivity or workmanship not up to standard.

36. Failure to work special hours, or special shifts, when required to do so.

37. Using vending machine (candy, cigarettes, etc.) during working hours.

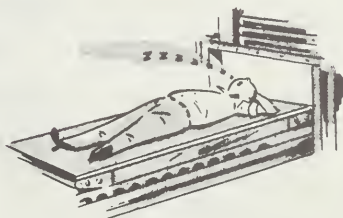
38. Leaving plant during work shift without permission.

39. Running in the plant.

40. Leaving assigned work area without proper authorization.

41. Interfering with plant discipline or efficiency.

42. Entering restricted areas without specific permission.



43. Sleeping on job during working hours.

**OBSERVE  
ALL  
SAFETY  
RULES!**

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RESPONDENT'S EXHIBIT 1.

Kit Manufacturing Co., Inc.

9-16-59

4-13-59

R-1 E.E.B

Change of Status

Elsworth Jordan

Termination

This employee has been terminated for violation of the rules of the Company, and irregular attendance on the job.

Since being with this company as a trainee from 3-1-59 to 4-13-59 he has missed several days work and has refused to work when told to do so. 1st week 41 hrs. second week 36.5 hrs. 3rd week 37.3 hrs. 4th week 42 hrs. should have been 48 hrs. 5th week 16 hrs. This employee refused to co-op, in work. I terminated him for being off job 3 days straight with notice and not being qualified for job

/s/ R. SKINNER,  
Supervisor

Reason For Termination

Involuntary

Voluntary

Lack of Work ✓

Sickness in family

Reorganization

Leaving the area

Violation of rules ✓

Return to school

Insubordination

Dislike of task

Irregular attendance ✓

Unsatisfactory work conditions

Dishonesty

Business for self

Not suited to the position ✓

Health

Disorderly conduct

Wage

RESPONDENT'S EXHIBIT 2.

Kit Manufacturing Co., Inc.

Correction Notice

Change of Status

9-16-59

3-30-59

R-2 E.E.B

Elsworth Jordon

Smoking and loitering in rest room which is near time clock, in order to punch his time card first. He has been properly warned of this before.

Employee refuses to sign correction notice.

/s/ R. SKINNER,  
Supervisor.

Reason for Termination

Involuntary

Lack of work

Reorganization

Violation of rules

Insubordination

Irregular attendance

Dishonesty

Not suited to the position

Disorderly conduct

Voluntary

Sickness in family

Leaving the area

Return to school

Dislike of task

Unsatisfactory work conditions

Business for self

Health

Wage

[Endorsed]: No. 17057. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Kit Manufacturing Company, Appellee. Transcript of Record. Petition for Enforcement of an Order of the National Relations Board.

Filed: September 30, 1960.

/s/ FRANK H. SCHMID,

Clerk of the United States Court of Appeals for the  
Ninth Circuit.

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United States Court of Appeals  
For The Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

v.

KIT MANUFACTURING COMPANY,  
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER  
OF THE NATIONAL LABOR RELATIONS  
BOARD.

To the Honorable, the Judges of the United States Court  
of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151 *et seq.*, as amended by 73 Stat. 519) hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, Kit Manufacturing Company, Caldwell, Idaho, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as Case Nos. 19-CA-1742, 1766 and 1815.

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of Idaho, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on April 27, 1960, duly stated

its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceeding set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel  
National Labor Relations Board

Dated at Washington, D. C., this 17th day of August, 1960.

[Endorsed]: Filed Aug. 22, 1960. Frank H. Schmid, Clerk.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCEMENT  
OF AN ORDER OF THE NATIONAL LABOR  
RELATIONS BOARD.

To the Honorable, the Judges of the United States Court  
of Appeals for the Ninth Circuit:

Comes Now The Kit Manufacturing Company, a corporation, and for its Answer to the Petition for Enforcement of an Order of the National Labor Relations Board, denies each and every allegation contained therein except as hereinafter admitted, qualified or explained:

(1) Admits that the Respondent is a California corporation engaged in business in the State of Idaho within the judicial circuit of this Court and that the acts with which the Respondent was charged are alleged to have occurred within this judicial circuit. The Respondent admits the jurisdiction of this Court.

(2) Respondent admits service upon it of the Board's Order, its Findings of Fact and Conclusions of Law on the 27th day of April, 1960.

(3) The Respondent alleges that the said Board's Findings of Fact and Conclusions of Law and Decision and Order were not in accordance with the requirements of law and the fact and were not supported by substantial evidence or the record as a whole and do not comply with the requirements and due process.

(4) That the General Counsel has failed to sustain the burden of proving by a preponderance of the evidence that the employee in question was discharged for union activities and not for cause and that the Decision

is based upon inferences and not upon evidence contained in the record.

(5) The Respondent prays reference to the record of the proceedings before the said Board and the evidence, pleadings, Findings of Fact, Conclusions of Law and Decision and Order of the Board and the Trial Examiner and all other proceedings had in this matter.

Wherefore, The Respondent prays that the Court review the said Order and enter a decree denying the Board's Petition for Enforcement and set aside the Board's Order in the subject proceedings.

Dated: September 6, 1960.

Respectfully submitted,

/s/ ELI A. WESTON,  
Attorney for Respondent,  
Kit Manufacturing Company.

Duly verified.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed Sept. 8, 1960. Frank H. Schmid,  
Clerk.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, petitioner herein, in accordance with the rules of this Court hereby state the following as the points on which it intends to rely:

1. Substantial evidence on the whole record supports the Board's finding that respondent Company violated Section 8 (a) (1) of the Act by threatening employees with economic reprisals if they engaged in union activities, unionized, or voted in favor of a union in representational elections and by promising and instituting economic benefits for refraining from engaging in union activities, for rejecting unions or for not supporting them.

2. Substantial evidence on the record as a whole supports the Board's finding that respondent Company violated Section 8 (a) (3) and (1) of the Act by discharging Employee Elsworth Jordon because of his union activities.

/s/ MARCEL MALLET-PREVOST,  
Assistant General Counsel  
National Labor Relations Board

Dated at Washington, D. C., this 23rd day of September, 1960.

[Endorsed]: Filed Sept. 26, 1960. Frank H. Schmid, Clerk.